THE JURISDICTION OF THE ADMIRALTY Of *England* Asserted, AGAINST Sr. EDWARD COKE'S *Articuli Admiralitatis*, In XXII Chapter of his Jurisdiction Of *COURTS*.

By *RICHARD ZOUCH* Doctor of the Civil Law, and late Judge of the High Court of *ADMIRALTY*.

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TO THE

READER.

I *Do certifie and atteſt, that the Treatiſe Entituled*, The Juriſdiction of the High Court of Admiralty aſſerted, *&c. by* Dr. Zouch, *was delivered into my hands by the Author himſelf to be Printed, and which he inten-*

To the Reader.

intended to have Dedicated to his Royal Highneſs JAMES Duke of YORK, *Lord High Admiral of* England.

Drs. Commons
Febr. 25.
1653.

Tim. Baldwyn.

ASSER-

ASSERTIONS
Concerning the
JURISDICTION of the ADMIRALTY
OF
ENGLAND.

1. THat in all places where Navigation and Trade by Sea have been in Uſe and Eſteem, and particularly in *England*, Special Laws have been provided, for regulating the ſame.

2. That in all places where Laws have been provided for buſineſſes concerning the Sea, as alſo in *England*, ſpecial Judges have been appointed, to determine differences, and to redreſſe offences concerning the ſame.

3. That in all places where ſpecial Judges have been appointed, for Sea affairs, as alſo in *England*, certain Cauſes, *viz.* all ſuch as have relation to Navigation, and Negotiation by Sea, have been held proper for their Conuſance.

4. That the Juriſdiction of the Lord High Admiral of *England*, as it is granted

ted by the King, and uſually exerciſed in the Court of Admiralty, may conſiſt with the Laws and Statutes of the Realm.

5. That the Lord Admiral of *England* may hold Conuſance of Contracts, and Writings made at Land, touching buſineſſes of Navigation, and Trade by Sea.

6. That the Admiral of *England* may hold Conuſance of things done in Ports, and Navigable Rivers, as touching damage done to Perſons, Ships, and Goods, Annoyances of free Paſſage, and unlawfull Fiſhing.

7. That the Lord Admiral of *England* may hold Pleas of Contracts, and other things done beyond the Sea, relating to Navigation, and Trade by Sea.

8. That the Courts and Judges of the Common-Law do intermeddle with, and interrupt the Court of Admiralty in Cauſes properly belonging to that Court.

9. That the Tryal of Cauſes concerning Navigation, and Trade, in the Court of Admiralty, is more commodious for the Kingdome, and the Subjects thereof, than in the Courts of Common-Law.

Sir

Sir EDWARD COKE's Juriſdiction of COURTS.

CAP. XXII.

The Court of the Admiralty proceeding According to the Civil LAW.

Articuli Admiralitatis.

THe Complaint of the Lord Admiral of England to the Kings moſt Excellent Majeſty, againſt the Judges of the Realm concerning Prohibitions granted to the Court of the Admiralty, 11 Febr. penultimo die Termini Hillarii, *Anno* 8. Jac. Regis, the Effect of which complaint was after by his Majeſties Commandment ſet down in Articles by Dr. Dun, Judge of the Admiralty, which are as followeth, with anſwers to the ſame by the Judges of the Realm, which they afterwards confirmed by

The proceſſe and proceedings in this Court are in the name of the Lord Admiral.

by three kinds of authorities in Law, 1. by Acts of Parliament, 2. by Judgements and Judicial proceedings, and lastly by Book cases.

The Title of the Complaint.

Certain grievances whereof the Lord Admiral and his Officers of the Admiralty do especially complain, and desire rearesse.

Obj. 1. THat whereas the Conusance of all Contracts and other things done upon the Sea belongeth to the Admiral Jurisdiction, the same are made tryable at the Common-Law, by supposing the same to have been done in *Cheapside*, or such places.

Answer. *By the Laws of this Realm, the Court of the Admiral hath no Conusance, power, or Jurisdiction of any manner of Contract, Plea, or Querele, within any County of the Realm, either upon the Land, or Water, but every such Contract, Plea, or Querele, and all other things rising within any County of the Realm, either upon the Land, or Water, and also Wreck of the Sea, ought to be tryed, determined, discussed and remedied by the Laws of the Land, and not before, or by the Admiral,*

Admiral, or his Lieutenant in any manner; So as it is not material whether the place be upon the water, infra fluxum, & refluxum aquæ; *but whether it be upon any water within any County: Wherefore we acknowledge, that of Contracts, Pleas, and Quereles made upon the Sea, or any part thereof, which is not within any County (from whence no tryal can be had by Twelve men) the Admiral hath and ought to have Juriſdiction. And no Preſident can be ſhewed, that any Prohibition hath been granted, for any Contract, Plea, or Querele, concerning any marine cauſe made or done upon the Sea, taking that only to be the Sea, wherein the Admiral hath Juriſdiction, which is before by Law deſcribed to be out of any County. See more of this matter in the anſwer to the ſixth Article.*

When Actions are brought in the Admiralty upon Bargains or Contracts made beyond the Seas, wherein the Common-Law cannot adminiſter Juſtice, yet in theſe cauſes, Prohibitions are awarded againſt the Admiral Court. Object. 2.

Bargains or Contracts made beyond the Seas, wherein the Common-Law cannot adminiſter Juſtice, (which is the effect of this Article) Anſwer. See hereafter in the proof

by Judgements, & Judicial Presidents.

Article) *do belong to the Conſtable, and Marſhal: for the Juriſdiction of the Admiral is wholly confined to the Sea which is out of any County. But if any Indenture, Bond, or other Specialty, or any Contract be made beyond Sea, for doing of any Act, or Payment of any money, within this Realm, or otherwiſe, wherein the Common-Law can adminiſter juſtice, and give ordinary remedy, in theſe caſes, neither the Conſtable and Marſhal, nor the Court of the Admiralty, hath any Juriſdiction. And therefore when this Court of the Admiralty hath dealt therewith in derogation of the Common-Law, we find that Prohibitions have been granted, as by Law they ought.*

Object. 3. Whereas time out of mind the Admiral Court hath uſed to take Stipulation for appearance, and performance of the Acts and Judgments of the ſame Court, It is now affirmed by the Judges of the Common-Law, that the Admiral Court is no Court of Record, and therefore not able to take ſuch Stipulations, and hereupon Prohibitions are granted, to the utter over-throw of that Juriſdiction.

Anſwer. *The Court of the Admiralty proceeding by the Civil Law, is no Court of Record, and*

and therefore cannot take any ſuch Recogniſance as a Court of Record may do. And for taking of Recogniſances againſt the Laws of the Realm, we find that Prohibitions have been granted, as by Law they ought; and if an Erroneous ſentence be given in that Court, no Writ of Error, but an Appeal to certain Delegates does lye, as it appeareth by the Statute of 8 Eliz. Reginæ Cap. 5. *which proveth that it is no Court of Record.* 8 Eliz. Cap. 5.

That Charter-parties made only to be performed upon the Seas, are daily withdrawn from that Court by Prohibitions. Object. 4.

If the Charter-party be made within any City, Port, Town, or County of this Realm, although it be to be performed either upon the Seas or beyond the Seas, yet is the ſame to be tryed and determined by the ordinary courſe of the Common-Law, and not in the Court of the Admiralty; And therefore when that Court hath incroached upon the Common-Law, in that caſe the Judge of the Admiralty, and Party ſuing there, have been Prohibited, and often times the party condemned in great and grievous dammages by the Laws of the Realm. Anſwer.

That the Clauſe of *non obſtante Statuto,* Object. 5.

tuto, which hath foundation in his Majesties Prerogative, and is current in all other grants, yet in the Lord Admirals Patent, is said to be of no force to warrant the Determination of the Causes committed to him in his Lordships Patent, and so rejected by the Judges of the Common-Law.

Answer. *Without all question the Statutes of* 13 R. 2. Cap. 3. 15 R. 2. Cap. 5. *&* 2 H. 4. Cap. 11. *being Statutes declaring the Jurisdiction of the Court of the Admiral, and wherein all the Subjects of the Realm have interest, cannot be dispenc'd with by any* Non obstante, *and therefore not worthy of any answer; but by colour thereof the Court of the Admiralty hath contrary to those Acts of Parliament, incroached upon the Jurisdiction of the Common-Law, to the intolerable grievance of the Subjects, which have oftentimes urged them to complain in your Majesties Courts of Ordinary Justice, at* Westminster, *for their relief in that behalf.*

13 R. 2. Cap. 3.
15 R. 2. Cap. 5.
2 H. 4. Cap. 11.

Object. 6. To the end that the Admiral Jurisdiction may receive all manner of impeachment, and interruption, the Rivers beneath the first Bridges, where it ebbeth and floweth, and the Ports and Creeks

Creeks are by the Judges of the Common-Law affirmed to be no part of the Seas, nor within the Admiral Juriſdiction, and thereupon Prohibitions are uſually awarded upon actions depending in that Court, for Contracts and other things done in thoſe places, notwithſtanding that by uſe and practice time out of mind, the Admiral Court have had Juriſdiction within ſuch Ports, Creeks and Rivers.

The like anſwer as to the firſt; and it is further added, that for the Death of a man, and of Mayhem (*in thoſe two caſes onely*) *done in great Ships, being and hovering in the main ſtream only, beneath the points of the ſame Rivers, nigh to the Sea, and no other place of the ſame Rivers, nor in other cauſes but in thoſe two onely, the Admiral hath cogniſance. But for all Contracts Pleas and Quereles made or done upon a River, Haven or Creek, within any County of this Realm, the Admiral without queſtion hath not any Juriſdiction, for then he ſhould hold plea of things done within the body of the County, which are tryable by the verdict of Twelve men, and meerly determinable by the Common-Law, and not within the Court of Admiralty according to the Civil Law, for* Anſwer.

that

that were to change, and alter the Laws of the Realm, in thoſe caſes, and make thoſe Contracts, Pleas, and Quereles tryable by the Common-Laws of the Realm to be drawn ad aliud examen, *and to be ſentenced by the Judge of the Admiralty, according to the Civil Laws, and how dangerous and penal it is for them to deal in theſe caſes, it appeareth by Judicial Preſidents of former ages. See the anſwer to the firſt Article.*

Object. 7. That the agreement made in *Anno Dom.* 1575. between the Judges of the Kings Bench, and the Court of Admiralty, for the more quiet, and certain execution of Admiral Juriſdiction, is not obſerved as it ought to be.

Anſwer. *The ſuppoſed agreement mentioned in this Article hath not as yet been delivered unto us, but having heard the ſame read over before his Majeſty (out of a paper not ſubſcribed with the hand of any Judge) we anſwer, that for ſo much thereof as differeth from theſe Anſwers, it is againſt the Laws, and Statutes of this Realm, and therefore the Judges of the Kings Bench, never aſſented thereunto, as is pretended, neither doth the Phraſe thereof agree with the Termes of the Laws of the Realm.*

Object. 8. Many other Grievances there are, which

which in discussing of these former will easily appear worthy also of Reformation.

This Article is so General, as no particular answer can be made thereunto, onely it appeareth by that which hath been said, That the Lord Admiral his Officers, and Ministers, principally by colour of the said void non obstante, *and for want of Learned advice, have unjustly incroached upon the Common Laws of this Realm, whereof the marvail is the lesse, for that the Lord Admiral, his Lieutenants, Officers and Ministers, have without all colour, encroached and intruded upon a Right and Prerogative due to the Crown, in that they have seized, and converted to their own uses, Goods and Chattels of infinite value, taken by Pyrats at Sea, and other Goods and Chattels which in no sort appertain unto his Lordship, by his Letters Patents, wherein the said* non obstante *is contained, and for which he and his Officers remain accountable to his Majesty. And they now wanting in this Blessed time of Peace, causes appertaining to their natural Jurisdiction, they now incroach upon the Jurisdiction of the Common-Law, lest they should sit idle, and reap no profit; and if a greater number of Prohibitions (as they*

Answer.

they affirm) *have been granted, since the great benefit of this happy Peace, than before in time of hostility, it moveth from their own encroachments, upon the Jurisdiction of the Common Law; so that they do not onely unjustly incroach, but complain also of the Judges of the Realm for doing of Justice in these cases.*

The particular Authorities promiscuously alleged by Sr. Edward Coke, *are distinctly inserted in the Chapters following, in such places as they seem to concern.*

THE

THE JURISDICTION of the Admiralty of England Asserted.

That in all places where Navigation and Trade by Sea have been in use and esteem, and particularly in England, special Lawes have been provided for Regulating the same. *Assert. 1*

LA Mer a ses loix comme la terre, The Sea (saith *Godfrey* a learned Author,) *hath its lawes as well as the Land.* And it is certain, that Navigation was no sooner invented, and men had experience of the commodity proceeding from Negotiation by Sea, but they established lawes for the maintaining and regulating the same. So much may bee confirmed by what is observable from the use, and *Commene sur les Cutumes de Normandy Te d: Vices.*

practice, First of those Nations and States which border on the Mediterranean Seas; and secondly of those which confine on the Western Ocean, and the Seas Northward.

Touching the first, Amongst the Grecians, the Inhabitants of the Isle of *Rhodes* have been most eminent for their policy in the affaires of the Sea, *Cicero* saith *Rhodiorum usque ad nostram memoriam Disciplina navalis & gloria remansit.* And *Constantinus Harmenopulus* a famous Judge at *Thessalonica*, and Conservatour of the law there, gives that credit to their Lawes, that he affirmes, Τὰ ναυτικὰ πάντα καὶ ὅσα κατὰ θαλασσαν, &c. *All businesse concerning Navigation, and all causes concerning things done at Sea, are decided by the Rhodian Lawes, for the Lawes of the Rhodians are of all Sea-Lawes the most antient.* Those Sea-Lawes of the *Rhodians*, or some part of them, are extant, published in Greek and Latine by *Symon Schardius*, and *Marquardus Freherus*, and out of them related by *Marisotus*, in the first part of his *Orbis maritimus*.

Orat. pro Lege Manilia.

Prochiron l. 2. tit. 11.

The *Romans*, who in the beginning of their Republique, received their Lawes of the *Twelve Tables*, from the *Athenians*, under the Empire, when their State was at

at the heighest, and abundantly furnished with Lawes for other matters, in the time of *Tiberius Claudius*, admitted the Rhodian Lawes for the regulating of the affaires of the Sea, whereupon, when one *Eudæmon* a Merchant of *Nicomedia* complained to the Emperour *Antoninus*, that he with others had suffered Shipwrack, and were spoyled of their goods by certain Officers of the Islands called *Cyclades*, the Emperour answered him Ἐγὼ μὲν τοῦ κόσμου κύριος, *that indeed he was Lord of the World*, that is to say, *of the Land, or Continent, but that the businesse, and rights of the Sea had a speciall Rule set down in the Rhodian Lawes, to which he did referr them.* These Rhodian Lawes, as Mr *Selden* observes, were afterwards inserted into the body of the Civil Laws, by the Emperour *Justinian* and others, and were in high esteem both in the Roman & Greek Empire: The titles to which they are reduced in the Civil Law are collected by *Petrus Peckius*, who hath commented upon them, and are likewise set forth by *Morisotus*, and as they were in use in the Greek Empire, they are set out by *Leunclavius*, amongst the *Basilica*, or Laws from *Rome* received at *Constantinople*.

l. Deprecatio D. de l. Rhod

D. Dominio Maris l. 1. c. 10.

Orbis maritimi. lib. 1 c. 30.

The wiſdome and equity of the Roman Civil Laws, in Proceſſe of time, have been received and allowed in all Nations, and ſtates of *Europe*, for the regulating and determining of buſineſſes at Sea, as it plainly appears in all Authors of ſeveral Nations, who have written of, or handled matters of that nature; To which have been added, diverſe Ordinances, and Conſtitutions of their own, for confirmation of thoſe Laws, and ſupply, where it ſeemed neceſſary: So the Provinces and places bordering on the Mediterranean Seas, according to former uſages, and cuſtoms, and upon new emergent occaſions, eſtabliſhed ſeveral orders, and conſtitutions for Maritime buſineſſes, which ſome eminent perſons reſiding at *Amalphia*, (a Town in the Kingdome of *Naples*) reduced into a Monument, called *Tabula Amalphitana*, of which *Marinus Frecia* writes; *In ſucceeding times, Maritime buſineſſes were not determined onely by the Rhodian Laws, but ſuites and controverſies touching matters of the Sea, were determined by the Law which is contained in the Table of Amalphia unto this day.*

Tract de Navigat, et mercatura.

D. Sulfeudis Tit. de Officio Admiralli.

The

The like was done by the people of *Venice*, *Morea*, or *Peloponnesus*, *Rome*, *Genua*, *Marsellis*, *Aragon*, *Barcelona*, &c. of all which places the Constitutions are comprehended in the Book, called *Il Consultate del Mare*, of which it is related in a distinct Chapter, *Questi sono buoni stablimenti, these are the good Constitutions and Customs which belong unto the Sea, the which wise men passing through the World have delivered to our Ancestors.* *Præfat del Cons. Solato de c. 44.*

Touching the Nations confining on the Western and Northern Ocean; It appears likewise, That in *Spain* there were special Laws and Ordinances provided for the businesses of the Sea, for occasions both of War and Peace, as in the *Partidas of Alphonsus the ninth*, under the Title of *De los navios*, and under the Title *De la guerre per la mer*, and under the Title *De los navios* in the Recopilation of *Philip* the 2d. which are illustrated by the Comment of *Alphonsus*, *Azevedo*, and others. *Partid. 5. et. 9.*

So the French for maritime affaires have divers Edicts or Ordinances which are stiled *Reglements sur la fait de Admiralty*, which were established by *Charls* the sixth, *Lewis* the twelfth, *Francis* the *Fontanon Les Edicts de Flance Tom. 3.*

first, and lastly by *Henry* the third, most fully, upon review of all former Acts, which were afterwards ratified by the Court of Parliament at *Paris*; But for ordinary matters of Navigation, and Trade at Sea, the Laws, or Judgements of *Oleron*, (which is an Island situate at the mouth of the River *Charenton*, near the Coast of *Aquitain*) are of special Observation in that Kingdone, as appears by an Antient Record, extant amongst the Royal Edicts, Entituled *Droits et preminences del Admirall*, wherein it is declared, *That the Admirall ought to do justice to all Merchants, according to Rights-judgements, &c. and usages of Oleron.* And *Grotius* affirms, *That as the Rhodian Laws in the Mediterranean Seas, were reputed as the Lawes of Nations, so in* France *are the Laws of Oleron*, and sayeth further in that place, *That in what esteem the Laws of* Oleron *have been in France*, the same have *Leges wisbuiences amongst the Nations beyond the Rhine*, which if *Welwood* mistakes not, are the same with the Laws of *Oleron*, Translated into Dutch for the use of the Sea Coasts in those parts.

Artic 19.

Flores sparsæ ad l. deprecatio.

A bridg. of Sea Laws. c.

Part. 1. c.

Malines in his *Lex Mercatoria*, sets forth a Catalogue of the Laws of the Hanse

Hanse Towns; And *Loccenius* in his Preface to his Book, *de Jure Maritimo*, mentions, *jus nauticum Sueticum*, and *Leges Wisbuiences*, which he sayeth are observed both in the Hanse Towns, and in the Northern Kingdomes, and also the Ordinances of the Hanse Towns themselves, and of the Belgick Common-wealth.

It is likewise apparent, that the Kingdome of *England* is not destitute of special Laws for the regulatiug of Sea businesses, which are distinct from the Common Laws of the Realm; as namely, the *Civil Law*, and others, of which the Books of Common Law take notice by the names of *Ley Merchant*, *and Ley Meriner.*

Touching the Civil Law, how it is observed in the Admiralty of *England*, Sir *Edward Cook* shews in his Comment upon *Littleton*, where he mentions divers Laws which are in use in this Kingdome; And Mr. *Selden* in his dissertation, *ad Fletam*, sayes, *Juris Civilis, vel Cæsarij usus ab antiquis seculis etiam num retinetur in foro Maritimo, seu curia Admiralitatis.* And accordingly in the time of King *Edward* the sixth, when Monsieur *Villandry* being imployed for the King of *France*,

ad Sect. 3.

c. 8.

Sir *John Hayward in the life of Ed.* 6.

upon occasion of some differences, happning betwixt the Subjects of *England*, and of *France*, concerning Sea businesses, Signified that the King his Master was desirous that the Ordinances, and the Customs of *England*, might be reduced into one form, without any difference betwixt them, and the French, answer was made, That the English Ordinances for Marine affairs, were no other than the Civil Laws, and certain antient Additions of the Realm, wherein they could not conceive any reason or convenience of change.

The Law Merchant is likewise mentioned, and allowed by Sir *Edward Cook* in
ad Sect. 3. his Comment upon *Littleton*, as a Law distinct from the Common Law of *England*; And so doth Mr. *Selden* mention
c. 32 *p.* 39. it in his notes upon *Fortescue*. And Sir *John Davis*, more fully owns it in a Manuscript Tract touching Impositions, where he affirms, *That both the Common Law and Statute Laws of* England *take notice of the Law Merchant, and do leave the causes of Merchants to be decided by the Rules of that Law, which Law Merchant, he saith, as it is part of the Law of Nature, and Nations, is universal, and one and the same*

ſame in all Countries of the World; For as Cicero ſaith of that Law, Non erit alia lex Romæ, alia Athenis, alia nunc, alia poſt hæc, ſed et omnes gentes, et omni tempore una eademque Lex obtinebit, whereby it is manifeſt, that the Cauſes concerning Merchants, are not now to be decided by the peculiar and Ordinary Lawes of every Country, but by the general Lawes of Nature and Nations. He ſayeth further, that untill he underſtood the difference betwixt the Law Merchant, and the Common Law of *England*, he did not a little marvell, that *England* entertaining traffique with all Nations of the World, having ſo many Ports, and ſo much good Shipping, The King of *England* alſo being Lord of the Sea, what ſhould be the cauſe, that in the Books of the Common Law of *England*, there are to be found ſo few Caſes, concerning Merchants, or Ships: But now the reaſon thereof was apparent, for that the Common Law of the Land did leave thoſe caſes to be ruled by another Law, Namely, the Law Merchant, which is a branch of the Law of Nations. Offic. 3.

The Law Mariner, to which happily the anſwer to the French Agent, mentioning

ning Antient additions of the Realm, related, were such things as are contained, and preserved in the Antient black Book of the Admiralty, as cer. tain Royal Ordinances, made by Antient Kings of the Realm. 2ly. The Judgements, or Resolutions of *Oleron*, in the time of King *Richard* the first.

3ly. Certain verdicts given upon an Inquisition at *Quinborough*, in the time of King *Edward* the third, and some other matters touching the Admiralty of *England*.

Touching the black Book of the Admiralty, Mr. *Selden* stiles it, *Vetusti Tribunalis maritimi Commentarii*. And *Codex Manuscriptus de Admiralatu*. And in his notes upon *Forteſcue*, he saith, that there are in it worthy of Observation, Constitutions touching the Admiralty of *Henry* the first, *Richard* the first, King *John*, and *Edward* the first.

De Dom. Maris l. 2. c. 28.

ad cap. 32.

Touching the Judgements or Laws of *Oleron*, and the use of them in the Admiralty Court, Mr. *Selden*, where he from them argues the Soveraignty of the Kings of *England*, in regard, King *Richard* the first did publish the Sea Lawes in the Island of *Oleron*, which was then in his possession

De Dom. Maris p. 254.

possession, sayes, *that they are still in force*; And Sir *Edward Cook* likewise argues, that the Jurisdiction of the Lord Admirall was long before the Reign of *Edward* the third, from the Laws of *Oleron*, *So called because they were there made by King Richard the first.* *Comment on Litt. Sect. 234.*

The Inquisition at *Quinborough* was taken in the year 1376. in the 49. of King *Edward* the third, by eighteen expert Sea-men, before *William Nevill* Admirall of the North, *Philip Courtny* Admirall of the West, And the Lord *Latimer* Warden of the Cinque Ports, And relates, as by the Title appears, to the usages of former times; The verdicts there given were desired to be established by the Kings Letters Patents, in the Cinque Ports and Towns adjoyning to the *Thames*, to be observed by the owners, Masters and Mariners of Ships, under penalties, &c. And *Malines* writes, *That he had seen them enrolled amongst the Records of the Tower, for the Government of the Admiralty.* *Part. 1. c. 17.*

That

Assert. 2 *That generally where Lawes have been provided for busines concerning the Sea, as also in* England, *several Judges have been appointed to determine differences, and redresse offences concerning the same.*

Syntag. l. 47. *c.* 37. GRegorius Tholosanus sayes, *Judicum diversorum ratio eo dirigitur, ut lites facilius expediantur, ne immortales sint sub judicibus mole negotiorum occupatis & proinde cum commercia hominum sint maximæ utilitatis, placuit Negotiatoribus proponi proprios Judices,* and accordingly.

First, the *Grecians* had their special and proper Judges appointed for those businesses, So *Suidas* Ναυτοδίκαι ἄρχοντες, &c. *The Natodicæ were Magistrates who did Justice to Seamen and others who trade by Sea.*

Petit de Legib. Atticis. And the *Athenians* had an expresse Law to that purpose, τὰς δίκας εἶναι πρὸς τοὺς θεσμοθέτας, &c. *That actions concerning Seamen and Merchants should be commenced before the Judges called Thesmothetæ according to their Instruments of Contracts, and dealings.*

Second-

Secondly, Amongst the Romans there was antiently an Officer called *Præfectus Classis* by *Tully* and *Livy*, and *Javolenus* makes mention of *Seius Saturninus Archigubernius Classis Britannicæ*, and *Tacitus* of *Prætor Classis*, which name imports a power of Judicature; in latter times they had also a Magistrate who was called *Comes Commerciorum*, whose Office was to over-see matters of Commerce or Negotiation.

in Verrem 7. Decad. 3. l. 3. l. 46. ad Senatus Tyrbes. l. Lib. 14.

1 ult. C. de Commercijs.

Thirdly, the Roman Empire being broken into several States, the lesser as Republiques, had their Consuls, and the greater Kingdomes had their Admiralls to order and determine those businesses. The office of the Consuls is described in the *Consolato Del Mare, Consoli determinano tutti le controversie, &c. The Consuls determine all controversies which are for Fraights, for Dammages done to goods on shipbord, for parts of ships to be set to sale at an outcry, for Commissions given to Masters and Mariners, for Debts contracted by Masters for the necessary use of the Ship, for things promised or undertaken betwixt Merchants and Mariners, for goods taken up at Sea, and generally for all other Contracts and businesses which are declared amongst the Customs of the Sea.*

cap. 20.

Fourthly,

Morisonis l.2.c.27. Fourthly, The Venetian State being a Seigniory, when any great War is expected, or undertaken, have their General or Supreme Commander of the Navy, who is of as high an esteem as any Magistrate of the City, having absolute power over all Officers, and others of the Navy; at other times the *Legatus classis*, or Vice-General, hath the power of disposing of the Navy, and over the Captains of the Gallies, and other persons of the Navy: They have besides *Sansovinus lib.17.* four Consuls, who Judge and determine all matters concerning Negotiation, and Trade.

Chassan, Catal. p. 9. cons. 26. Fifthly, Admirals in *Europe*, had their beginning (as most affirm) in the time of *Constantine* the Emperour, and that in *Magna Græcia*, which is now the Kingdome of *Naples*, where the dignity of Admirall is the third place, to wit after *Freeca de offic. Admir.* the Vice Roy, and Constable, To whom belongeth the Building, Repayring, and keeping of the Ships Royal, and setting out of the Fleets for Warre, with the Kings consent; He hath also Jurisdiction Civil, and Criminal, amongst Commanders, Officers, and others, employed about the Navy, and all others who get their

their lively-hood by the induſtry and art of the Sea, which are held to be ſuch, which tranſport in Ships, and adventure their Eſtates by Sea, as alſo ſuch that make it their Trade to take Fiſh, or do build Ships. This Court is called *Magna Curia*, and from it there lyes an appeal only to the ſupreme Councell; *Garſias Maſtrilli* ſayes, he hath all Juriſdiction, both Civil, and Criminal, in Maritime cauſes, excluſive to all others.

The King of *Spain* hath divers other Admirals, both in *Europe*, and the Indies of equal power, *Marinus Siculus* ſayeth, of the Admirall of *Caſtile*, that he is next unto the Conſtable, and hath ſupreme Authority over all that uſe the Sea, and is held to be Lord and chief Commander of the Sea, as it is alſo largely deſcribed in the *Partidos*; beſides, for the diſpatch of ordinary Maritime buſineſſe, by the ſame Laws, Judges are appointed to reſide in Port Towns, and other places on the Sea Coaſts, which are to hear the cauſes of Sea-men concerning Freight of Ships, and Contributions for goods caſt over-board, or any other matter, which Judges were to proceed plainly without ſolemnities, and with all expedition, &c. *Moris l. 2. c. 22.*

In

Edit. per Fontan.

In *France*, by an Ordinance of *Henry* the third, made upon a survey of all other former Ordinances, ratifyed by the Parliament of *Paris*, The Office of the Admirall in the Kings name is thus declared.

1. That of all Armies, which shall be raised and set to Sea, the Admirall of *France*, shall be chief, and our Lieutenant General, and shall be obeyed in all Maritime Towns and places, which are or may be, without contradiction.

Secondly, He shall have Jurisdiction, Conusance, and determination of all things done or committed on the Sea, or shoars of the Seas; likewise of all acts of Merchandise, fishing, freighting or letting to freight, or breach of ships, of Contracts made touching the matters afore-said, of Charter parties of Sea briefs, and of all other things whatsoever happening upon the Sea, or shoars thereof; as our Lieutenant General alone, and to all purposes, in the places afore-said, which Jurisdiction, Cognizance, and determination, we have interdicted to all other our Judges.

He shall hold his principal Court at the marble Table, in the Palace at *Paris*, and

and shall appoint Judges Deputies in Maritime Cities, and Towns, who shall hear ordinary matters happening within their Circuits, and if any businesse fall out worthy of greater consideration, they shall referre the same to him.

In *Denmark* the third place of dignity in the Kingdom belongs to the Admirall, who is commonly called Rycks Admirall, and as *Morisotus*, writes, He hath the same Right and Power as the Admirall of *France*. *Tit. 2. c. 14.*

In *Scotland* (as *Wellwood* a Scotish man writes) the Admirall and Judge of the Admiralty hath power within the Sea-flood, over all Sea-faring men, and in all Sea-faring Causes and debates, Civil and Criminal, So that no other Judge of any degree may meddle therewith, but only by way of Assistance, as it was found in the Action brought by *Anthony* de la *Tour* against *Christian Martens*, 6 *Novemb.* 1542. *Abridg. c. 1*

The Admirall of *England* (as Mr. *Selden* observes) hath another manner of Right, and Jurisdiction, than the Admirall of *France*, or other ordinary Admiralls, for that the Jurisdiction over the Seas of *England*, and *Ireland*, and the *De Dom. Maris l. 2. c. 27.*

Dominions and Iſles of the ſame as a Province are committed to his Cuſtody and Tuition, as to a Preſident to defend the ſame, as in the Dominion of the King, by whom he is Authorized, The bounds of which Juriſdiction are limited, and determined in thoſe Seas; and beſides, as the *French*, and other Admiralls, he hath the power over the Navy, and the Government over the Sea-men, and Juriſdiction over the perſons and moveable goods which come under his Judicature, *pour raiſon ou occaſion del faie de la mer*; which Juriſdiction hath no bounds, but extends to the *Mediterranean*, *African*, and *Indian* Seas, or any other far remote.

What Mr. *Selden* delivers concerning the Admirall of *Englands* ſpecial Juriſdiction, in the firſt reſpect, is confirmed by an ancient Record in French in *Archivis* of the Tower of *London*, ſet out at large by Sr. *Edward Cook*, the effect and tenour whereof is, That whereas during the Warrs between *Philip* King of *France* and *Guy* Earl of *Flanders*, *Reginerus Grimbaldus* Admirall of the French Navy, had ſpoiled the Merchants of divers Nations ſailing towards *Flanders*, in the

Juriſdiction. p. 142.

Engliſh

Engliſh Seas, and Commiſſioners being appointed by the two Kings, to hear and redreſſe the Complaints concerning the ſame, the Deputies of the Prelates, Nobility, and Commonalty of the Towns of *England*, and of divers Maritime Countries, as of *Genua*, *Catalonia*, *Spain*, *Germany*, *Zeland*, *Holland*, *Frieſland*, and *Norway* declare, That the Kings of *England*, by reaſon of that Realm, time out of mind, have been in peaceable poſſeſſion of the Soveraign Dominion of the Sea of *England*, and of the Iſlands therein ſituate, by ordering, and eſtabliſhing Lawes, Statutes, and Counter-mands, of Armes, & Veſſels otherwiſe furniſhed than for Merchandiſing, and by taking ſecurity, and giving protection in all Cauſes needful, & by ordeining all other things requiſite for the maintaining of Peace and Right amongſt all other People, as well of other Seignieuries, as of their own, paſſing through the ſame. And all manner of Cognizance and Juriſdiction high and low touching thoſe Laws, Statutes, Ordinances, & Counter-mands, and all other Acts which may appertain to the Soveraign Dominion afore-ſaid, and that *A. D. B.* Admirall of

the Sea deputed by the King of *England*, and all other Admiralls appointed by him, and his Ancestors, heretofore Kings of *England*, have been in peaceable Possession of the said Soveraign Protection, together with the Conusance, and Jurisdiction, and all things before mentioned thereunto appertaining (except in case of Appeals to their Soveraign Kings of *England*, for default of doing Right, or giving wrong Judgment) and especially in making Restraint, doing Justice, and taking security for the peace of all manner of People, bearing Arms on the Sea, or Ships sailing otherwise apparelled, or furnished than belongs to Ships of Merchandise, and in all other points in which a man may have reasonable Cause of Suspicion against them, touching Robbery or other misdemeanours.

Besides the Jurisdiction Extraordinary of the Admirall of *England* concerning Protection against depredations in the English Seas (as Mr. *Selden* writes) his Ordinary Jurisdiction is over the persons, and goods moveable, which come under his judicature by *occasion of businesses relating to the Sea*, is not only agreeable to the Jurisdiction of the French and other Ad-

Admiralls, but is alſo warranted by the Kings Commiſſions, as it is apparent by antient, and later Patents, granted by the Kings of *England*, in which the Admiralls of *England's* Authority and Juriſdiction is expreſſely & fully declared, as followeth, *Damus & Concedimus &c. We give and grant to N. the Office of our great Admiral of England, Ireland, & Wales &c. And we make, appoint, and ordain him Governour General of our Navies, and Seas of the Kingdoms afore-ſaid: And be it further known, that we of our ſpecial Grace and certain knowledge, do give and grant to the ſame our great Admirall and Governour of our Navies all and all manner of Juriſdictions, Liberties, Offices, Fees, Profits, Preheminences, and Privileges whatſoever belonging or appertaining*; So far is recited in the Solemn form of the Admiralls Commiſſion, by Mr. *Selden*, as ſufficient to his purpoſe, and then ſaith he follow many things declaring that moſt ample power, and Juriſdiction, amongſt which is expreſſed in Civil Cauſes, that to him it is granted, *Ad cognoſcendum de placitis &c. To hold Conuſance of Pleas, Debts, Bills of Exchange, Policies of Aſſurance, Accounts, Charter-parties, Contractions, Bills of Lading, and all* Selden l. 2. c. 16.

o her Contracts, which may any wayes concern Moneys due for freight of Ships hired, and let to hire, moneys lent to be paid beyond the Seas, at the hazzard of the lender, and alſo of any Cauſe, Buſineſſe, or Injury whatſoever had, or done, in or upon, or through the Seas, or publique Rivers, or freſh Waters, Streams, Havens and places ſubject to overflowing, whatſoever, within the flowing and ebbing of the Sea, upon the Shoares or Banks whatſoever adjoyning to them, or either of them, from any the ſaid firſt Bridges whatſoever, towards the Sea, throughout our Kingdoms of England and Ireland, or our Dominions aforeſaid, or elſe where, beyond the Seas, or in any Ports beyond the Seas whatſoever, with divers other Clauſes, containing power of coercion for the maintenance of that Juriſdiction.

By the Commiſſion of Oyer and Terminer granted likewiſe under the Great Seal, according to the Statute of the 28th. of *Henry* the 8. chap. 15. and other Statutes for the puniſhing of Offences and matters Criminal committed within the Juriſdiction of the Admirall, Power is granted in the Kings name, to hear, and determine *De omnibus & ſingulis proditionibus &c. of all and ſingular Treaſons, Robberies,*

Robberies, Murthers, Felonies, and Confederacies &c. as well in and upon the Sea, or any River, Port or Fresh-water, Creek, or place whatsoever, within the flowing of the Sea to the the full, beneath the first Bridges towards the Sea, as upon the shoar of the Sea, or elsewhere within the Kings Maritime Jurisdiction of the Admiralty of the Realm of England, and the Dominion of the same. As well against the Peace and the Laws of the Land, as against the Kings Laws, Statutes, and Ordinances of the Kings Court of Admiralty. And also touching all and singular other matters, which concern Merchants, Owners and Proprietaries of Ships, Masters, Shipmen, Mariners, Shipwrights, Fisher-men, Workmen, Labourers, Saylours, Servitours or any others.

Aſſert. 3 *That in all places, where Judges have been appointed for Sea buſineſſes, as alſo in England, certain Cauſes, viz. ſuch as have Relation to Navigation, and Negotiation by Sea, have been held proper for their Conuſance.*

Tit. de Varlet. MAritime Laws, ſaith *Godefry*, *concern perſons or Dealings between Merchants and Sea-men*, which is agreeable to the ſubject matter of the ſeveral Laws mentioned in the firſt Chapter, and what appeares to have belonged to the office of Maritime Judges.

Amongſt the Grecians, Cauſes happening betwixt Merchants and Sea-men were called δίκαι ἐμπορικαι, *Cauſes Concerconcerning Trade*, as Julius Pollux, *and* Δίκαι τῶν ναυκλήρων, *as* Suidas *teſtifies*, The Rhodian Lawes, although as they are now extant, are not ranked under diſtinct Heads or Titles, yet they may be reduced to theſe particulars, As firſt,

Gramat. verb. Δίκαι.

Con-

Concerning hiring & freighting of Ships; Secondly, Concerning tranſporting Paſſingers and Goods; Thirdly, Touching the delivery ad diſcharging the things received in good Condition; Fourthly, Touching Contributions for Loſſes, in Common danger, and for ſalvage of Goods. Fifthly, For borrowing and truſting of money for Sea-voyages. Sixthly, Concerning Mariners duties, their wages, and the like.

The ſame were the matters taken into Conſideration, when the *Roman* Senate entred into a Conſultation to ſettle the buſineſſe of the Sea; For when *Tiberius Claudius* had ſignified to them, that the Sea-men and Merchants trading by Sea, had beſought him, that ſuch buſineſſes which were incident to the Sea, might be reduced into ſome order, *Nero*, then a Senator, adviſed, that ſome might be ſent to the Iſle of *Rhodes*, who ſhould diligently enquire, and take notice of what was there obſerved, *Concerning Mariners, Sea-men, Merchants, and paſſengers Goods put on Board ſhipps, Partner-ſhips, Building, Buying, or Selling of Ships, Entruſting Gold, and Silver, and divers other things.* All which was done accordingly, as

Jac. Godefred. comment. ad l. Deprecatio.

as appeares by the titles of the Roman Civil Lawes, into which the *Rhodian* Laws were inserted, and by the Laws touching Sea affairs, which afterwards the *Greek* Empire received from the *Romans*, as in the Title *De Nauticis Obligationibus &c. Touching the obligations, or duties of Mariners, and all manner of actions which may be brought concerning Ships, or those who sail in Ships, Owners, Masters, or Passengers: Moreover touching wrecks of Ships, casting forth of Goods, and Contributions, and also Fisher-men and Fishing.*

Βασιλικ. lib. 33.

The same businesses also are regulated by the Constitutions of the *Consolato del Mare*, in which are conteined, the Statutes and Ordinances of Antient Authority, provided for all Causes of Merchandising, and Navigation, as it is more fully signified in a Chapter of that Book, *Nello progresso di questo libro. In the progresse of this book it is declared, how the Masters of Ships ought to demean themselves, towards Merchants, Mariners, Strangers, and all other sorts of people, which passe in their Ships, and also how Merchants ought to perform with Masters of Ships, and how Strangers and others ought to pay fraight:*

Cap. 24.

fraight for the transporting of their persons &c. All which are made good in the particular Ordinances and Constitutions therein conteined.

The Sea-Lawes in the *Spanish Partidaes* have the same scope, as it is in the Title, *We intend here to speak of shipping hired to undergoe the Adventure of the Sea, and we will shew what things the Master of the Ship ought to observe towards the Merchants, and how the dammage that shall happen to goods cast over board by occasion of storm ought to be divided, and of the price due for the hire of Ships, and of other matters with may concern the same affair.* Partid. 5. & 9.

So much is likewise signified in the Title of the Laws of *Oleron*, which in the Edition annexed to the Customes of *Normandy*, are called *Ordonances Royaul touchant le fait de la Mere*, as also Judgments, *de la mere, des nef, des Mariners, & aussi des Marchants, & de tout leur estre*, and in the Edition set out by *Peter Garrias La maniere comme les Maestres de Navire. The manner how Masters of Ships, Merchants and Mariners, ought to regulate and govern themselves, according to the Judgements of the Roll of* Oleron.

Notwithstanding these Examples of the

the uſages of all other Nations, ſome amongſt us, as take upon thē to determine, that to the Juriſdiction of the Admiralls of *England*, no ſpecial, or certain Cauſes do belong; ſo the Lord *Hobard*, in *Audly* and *Jennings* Caſe affirms, That their Juriſdiction is not in reſpect of any certain Cauſes, as the Cauſes of Tithes and Teſtaments are in the Spiritual Court, but only in reſpect of place, and no doubt but Sir *Edward Cook*, and others who talk ſo much of *Altum Mare*, are themſelves perſwaded, and would perſwade others, to be of that opinion; but it is apparent, that it is not the place only, but the nature of the Caſe, happening within ſuch a place, that makes the Juriſdiction, and therefore if a Contract of Marriage, or a Teſtament be made at Sea, the Admirall claimes no conuſance thereof, which he might do if the place alone were ſufficient to give the Juriſdiction, and ſo *Godfry* in his Comment upon the Cuſtomes of *Normandy* ſaith, *that the Juriſdiction of the Marſhal of* France, *and of the Admirall, are limited to certain Cauſes and matters, whereupon it followeth, that they cannot Judge, but of things, of which the Conuſance belongs unto them, for their Juriſdictions*

Tit. de Varcos.

riſdictions are not regulated onely by the Territory or place, but alſo by the Cauſes and matters over which a competent power is granted unto them. And ſo Juſtice *Reeves*, in an Argument in *Communi Banco* delivered, that he differed in opinion from the Lord *Hobard*, and affirmed, that the Cauſe as well as the place gave Juriſdiction, for if a man upon the Sea do ſeal a Leaſe, or an Obligation, the Common Law ſhall have the Juriſdiction, and not the Admiralty, becauſe the Cauſe is not Maritime, and this he ſayes agrees with the Lord *Hobard* himſelf in *Bridgemans* Caſe, and Sergeant *Callis* in his Readings doth acknowledge, *That the King rules on the Sea by the Laws Imperial and the Roll of* Oleron, *and others, But that is, ſaith he, in the Cauſes of Shipping, and of Merchants and Mariners.* And whereas the Sergeant ſayth well, and I ſuppoſe no man will deny but the Civil or Imperial Laws, the Roll of *Oleron* and others (by which I ſuppoſe may be underſtood, the Articles of the Inquiſition of *Quinborough*) are of force in the Admiralty of *England*, For further Illuſtration that there are certain Cauſes properly belonging to the Conuſance and Juriſdiction of the Admiralty

Lenthal & alii contr. D. Will. Ruſſel & alii.

miralty Court of *England*, It may be more particularly deduced and ſhewed from theſe ſeveral, and reſpective authorities.

And firſt, as touching the particular Cauſes, which may be deduced from the Civil Laws, ſome things have been allready ſhewed, out of what the *Romans* derived from the *Rhodian* Laws, and if any will be further ſatisfied, he may find it perſpicuouſly declared, in a Tract. *De Jure & judicio Maritimo*, wherein the particular Cauſes, not only Civil, but alſo Criminal, concerning Navigation, & Negotiation by Sea, are ſummarily ſet down, with Relation to the Text of the Civil Laws.

And touching the Laws of *Oleron*, which are leſſe obvious, it may be obſerved, that the particular Caſes therein are, as firſt

Touching Ships hired for Sea-voyages, and their proceedings in the ſame.

1 How Maſters, and Mariners, are to be ſatisfied, when the Merchant provides not his goods ready, to be laden at the time agreed upon.

2 How

2 How the Maſter ought to conſult with his Company before he put out of the Harbour, and proceed with their advice, and what he is lyable unto, if he do otherviſe.

3 How the Maſter ought to make ſatisfaction when the Merchant is prejudiced by his ſtay, in any place, and is not proceeding in the voyage.

4 How the Maſter, in caſe his Ship be diſabled by ſome misfortune, may repair it, or hire another, or if the Merchant refuſe, what fraight may be demanded.

Secondly, *Touching the ſafe keeping, and delivering of goods received into the Ships.*

1 How the Merchant ſhall be ſatisfied if his goods be damnified in the Ship, by evill ſtowing, or other bad uſage, and how the Maſter and Company may clear themſelves.

2 How the Maſter and Company are lyable unto the Merchant, if any goods brought into the port of diſcharge, miſcarry in the unlading by occaſion of the Tackling or Cordage which are found unfit.

Thirdly,

Thirdly, *Touching the Engaging of Ships or goods in caſe of neceſſity.*

1 Firſt, Whether the Maſter wanting means to proceed in his Voyage, may ſell, or diſpoſe of the Ship without Commiſſion from the Owners, and how, and in what caſe he may Engage ſome tackle, or furniture of the Ship.

2 How far, in caſe of neceſſity, the Maſter may intermeddle with the Merchants goods, and if he diſpoſe of any, how he is to make accompt, and give ſatisfaction.

Fourthly, *Touching Contributions to be made for loſs, upon occaſion of Common danger.*

1 Firſt, How the Maſter with advice of thoſe in the Ship, or otherwiſe, in extremity of tempeſt, may caſt out ſome mens goods, to ſave themſelves and the reſt, and how average, or Contribution is to be made.

2 How the Maſter in the tempeſt cuting down his Maſt, and caſting it over Board to ſave the Ship and goods, ought to

to have satisfaction from those whose goods were saved.

Fifthly, *Touching damages done by, or betwixt several Ships.*

First, How and in what manner the Damage is to be born when a Ship sailing into a Port bruizes or breaks another Ship riding there at Anchor.

Secondly, How if two Ships riding at Anchor in a Haven, and the water being low, the Master of the one observing some danger from the Anchor of the other, may give notice thereof to the Master of that ship, and if he neglect to remove it, may cause it to be done by his own Company, and if he be hindred therein, and damage done, what reparation may be recovered.

Sixthly, *Touching the charge for hiring of Pilots, and their duty.*

1 The Master being bound by Charter-party to pay Pilotage, in what places, and how far he is bound thereunto.

2 How far the Pilot is liable to make satisfaction of the ships miscarriage un-

der his charge, and whether he be bound when he hath brought her into the Harbour, if ſhe miſcarry by miſplacing there.

There be many other Caſes contained amongſt theſe Judgements of *Oleron*, but theſe may ſuffice for our purpoſe.

As the Roll of *Oleron* doth contain Judgements or Verdicts eſpecially in Civil Cauſes, which did belong to Maritime Judicature, ſo in the Inquiſition at *Quinborough* are preſented matters Criminal, and Offences concerning which antiently inquiry hath been made in the Admiralty Juriſdiction, which may be reduced into theſe heads, as

First, *Offences againſt the King and Kingdome*; as

1 Of ſuch as did furniſh the Enemy with Victuals and Ammunition, and of ſuch as did Traffick with the Enemies, without ſpecial Licence.

2 Of Traytors goods detained in ſhips, and concealed from the King.

3 Of Pirats, their Receivers, Maintainers and Comforters.

4 Of Murthers, Man-ſlaughters, Maymes,

Maymes, and Pety-felonies, committed in ſhips.

5 Of ſhips arreſted for the Kings ſervice, breaking the Arreſt, and of Sergeants of the Admiralty who for money diſcharge ſhips arreſted for the Kings ſervice, and of Mariners who having taken pay run away from the Kings ſervice.

Secondly, *Offences againſt the Publick good of the Kingdome*; as

1 Of ſhips tranſporting Gold and Silver.

2 Of carrying Corn over Sea without ſpecial Licence.

3 Of ſuch as turn away Merchandizes or Victuals from the Kings Ports.

4 Of Foreſtallers, Regrators, and of ſuch as uſe falſe Meaſures, Ballances, and Weights, within the Juriſdiction of the Admiralty.

5 Of ſuch as make ſpoil of wrecks, ſo that the Owners coming within a year and a day cannot have their goods.

6 Of ſuch as claim wrecks, having neither Charter nor Preſcription.

7 Of Wears, Riddles, Blind-ſtakes, Water-miils, &c. whereby ſhips or men have been loſt or endangered.

8 Of removing Anchors, and cutting of Buoy-Ropes.

9 Of ſuch as take Salmons at unſeaſonable times.

10 Of ſuch as ſpoyl the breed of Oiſters, or dreg for Oiſters, and Muſſels, at unſeaſonable times.

11 Of ſuch as fiſh with unlawfull Nets.

12 Of taking Royal Fiſhes, *viz.* Whales, Sturgeons, Purpoiſes, &c. and detaining the one half from the King.

Thirdly, *Offences againſt the Admiral, the Navy, and Diſcipline of the Sea.*

1 Of Judges entertaining Pleas of Cauſes belonging to the Admiral, and of ſuch as in Admiralty Cauſes ſue in the Courts of Common Law, and of ſuch as hinder the Execution of the Admirals proceſs.

2 Of Maſters and Mariners contemptuous to the Admiral.

3 Of the Admirals ſhares, of Weifs or Dereliſts, and of Deodands belonging to the Admiral.

4 Of Fletſon, Jetſon, and Lagon, belonging to the Admiral.

5 Of

5 Of such as Freight Strangers bottoms, where Ships of the Land may be had at reasonable rates.

6 Of Ship-wrights taking excessive wages.

7 Of Masters and Mariners taking excessive wages.

8 Of Pilots, by whose ignorance ships have miscarried.

9 Of Mariners forsaking their ships.

10 Of Mariners Rebellious, and disobedient to their Masters.

In the same antient Book of the Admiralty there is a Copy of a more antient Enquiry touching Admiral Causes, wherein some things relate to Constitutions made by King *Richard* the first at *Grimesby*, (*viz.*) That ships arrested for the Kings service, breaking arrest, shall be confiscated to the King; and by King *John* at *Hastings*, That no private man should appropriate to himself the benefit of any salt waters, by Meers, Ridles, and the like, and that the same should be pulled down.

And the fishing cryed common to all people was likewise ordered by King *John*.

This may suffice to confirm that there

were certain special Causes, both Civil and Criminal, which did antiently belong and properly to the Conusance of the Admiral, and to shew that his Jurisdiction was not wholly confined onely to the Sea.

Assert. 4 *That the Jurisdiction of the Admiral of* England, *as it is granted by the King, and is usually exercised in the Admiralty Court, may consist with the Statutes and Laws of this Realm.*

FIrst it appears by antient Record of the time of King *Edward* the first, *De superioritate Maris*, That it was acknowledged by the Deputies of the Parliament of *England*, and of divers other Nations, That the Kings of *England* time out of mind injoyed the Dominion and Soveraignty of the *English* Seas, by prescribing Laws and Statutes for the preserving Peace and Justice, and by exercising all kind of Authority in matters of Judicature, and all other things which may

may concern his Soveraignty in the same, which being granted, his power to depute a Magistrate or Officer to those purposes, with so much of his authority as he shall think fit, cannot be denied.

Secondly, That the Jurisdiction and power granted by the King in his Letters Patents to the Admiral, is agreeable to Commissions antiently granted, and which have been passed from time to time by the Kings learned Counsel, and by the Lord Chancellor, or the Lord Keeper for the time being, who have thereunto set the Great Seal: and that the authority and Jurisdiction of the Constable and Marshal is designed by *Sr Edward Cook*, by referring to Grants of those Offices antiently made by many several Kings, with exception onely to one irregular precedent, in the time of King *Edward* the fourth. *Juriſd. of Courts c. 6. F. 127.*

Thirdly, That Mr. *Selden* shews, that all the Patents of the Office of the Lord Admiral, from the beginning of Queen *Mary*'s time to the time of King *Charles*, have been conceived after one and the same form and tenor, as of *Edward* Lord *Clinton*, afterwards Earl of *Lincoln*, under King *Philip* and Queen *Mary*, of *Charles* *De Dom. Maris l. 2 c. 17.*

Howard Lord *Effingham*, afterwards Earl of *Nottingham*, under Queen *Elizabeth*, of *Charles* Duke of *York*, after King *Charles*, under King *James*, and of *George* Duke of *Buckingham*, under King *James*, and King *Charles*, to which may be added the Patent of *Algernon* Earl of *Northumberland* under King *Charles* the first, and of *James* the most Illustrious Duke of *York* under King *Charles* the Second.

Fourthly, That the Lord Admiral and his Deputies proceeding according to his Commission, is expresly allowed by King *Philip* and Queen *Mary*, where they by a Statute restraining the exportation of Corn without Licence, make a special provision, *That that Act shall not be prejudicial or hurtfull to the Lord Great Admiral of* England, *for the time being, or to the King and Queens Majesties Jurisdiction of the Admiralty, but that the said Lord Admiral or his Deputies shall exercise, use and execute all kinds of Jurisdiction belonging to the Sea, according to his or their Commissions*: which provision, although it seems to have been made in respect of that Statute, yet it shews what respect the King and Queen intended to their Lord High Admiral, their own Admi-

1 & 2 *Phil. & Mar.*

ralty

ralty Juriſdiction in all matters belonging to the Sea, and to the Commiſſion by them granted.

Againſt the Juriſdiction of the Admiral as is granted by the King, and as it is exercized in the Court, it is pretended in general, That it is not agreeable,

Firſt, To ſeveral Acts of Parliament,

Secondly, To divers Judgments, Book-Caſes and Judicial proceedings, to which may be added the Reſolutions of the Judges upon the complaint of the Admiral, in Sir *Edward Cooks Articuli Admiralitatis*, All which more ſpecially may be reduced to three heads.

Firſt, Where the Admiral meddles with Contracts and Writings concerning Sea buſineſſes made within the Realm.

Secondly, Where he meddles with other things done within the Bodies of Counties, and

Thirdly, With ſuch things as are made or done beyond the Sea.

The Acts of Parliament are, Firſt, The Statute of the 13. *Rich.* 2. *chap.* 5. which reſtrains the Admiral from meddling with things within the Realm. Secondly, That of the 15. of the ſame King, *chap.* 3. which declares, that he hath no Juriſdi-

ction

ction within Bodies of Counties. Thirdly, That of 2 *Hen.* the 4. which inflicts penalties on thoſe who ſue or proceed contrary to that of the 13 *Rich.* 2. Fourthly, That of the 5 of *Elizabeth*, which is pretended to exclude the Admiral from meddling with things done within Ports and Rivers.

The Firſt of theſe, being more general, may in this place be conſidered, the reſt being more particular may, in diſcuſſing of ſome other particular points to which they are appliable, be examined.

That of the 13 *Rich.* 2. *chap.* 5. ordains, that the Admirals and their Deputies ſhall not meddle of any thing done within the Realm, but only of things done upon the Sea, as it hath been uſed in the time of King *Edward* the Third.

Juriſd. of Courts p. 330. Touching this Statute it may be obſerved what Sir *Edward Cook* delivers out of *Plowdens* Commentaries, *That the Preamble of a Statute is the Key to open the meaning of the makers of the Act, and the miſchiefs which they intended to remedy*; now in the Præamble of the Statute it s ſuggeſted, that the Admiral had encroacht

croacht divers Juriſdictions and Franchiſes belonging to the King & other Lords, from whence it may be conceived, that the Parliament intended only to reſtrain him from medling in his Courts with ſuch things within the Realm, wherein he had encroacht upon the Juriſdiction of the King and other Lords, which what thoſe things were, it doth no wayes appear; but it cannot be imagined or reaſonably conceived, that it was intended the Admiral ſhould be debarred from proceeding in Cauſes of Navigation and Negotiation by Sea, which never did belong to any other Courts of the King or other Lords, and were formerly held proper for the conuſance of the Admiral, and as things were then ſtated could not be held encroachments.

So much may the rather be ſuppoſed, becauſe the Statute reſtraining him from meddling with things done within the Realm, but only with things done upon the Sea, further adds, *according to what hath been duly uſed, in the time of the Noble Prince King* Edward, *Grand-father to the King*, which was King *Edward* the Third.

Sir *Henry Spelman* writes, that ſome men *Gloſſ. v. Admiral.*

men did conceive *Causarum Nauticarum cognitionem, & forum rei maritimæ, quod hodie Curiam Admiralitatis vocant, sub* Edwardo *Tertio illuxisse*; and it is probable, that in that Kings time, who did many other glorious things for the good of this Nation, the Court of Admiralty received some setlement, and grew more conspicuous than it was before; but the Constitutions observed by Mr. *Selden* in the Book of the Admiralty of *Henry* the First, *Richard* the First, King *John*, and *Edward* the First do manifest, that the Court was much more antient: and Sir *Edward Cook*, to shew the antiquity of the Court of Admiralty to have been long before the time of *Edward* the Third, in whose dayes, he sayes, that some had dreamed that it had begun, recite, the antient Record *De superioritate Maris*, before mentioned, and likewise another quoted also by Mr. *Seldon*, wherein it is shewed that King *Edw.* the Third in the 12 year of his Reign did consult with all his Judges, *ad finem quod retineatur & continuetur ad subditorum prosequutionem forma procedendi quondam Domini Regis &c.* that is, *To the end that the form of proceedings at the suit of the Subjects begun*

Jurisd. of Courts p. 142.

Ibid. 144.

Lib. 2. *c.* 16.

begun and ordained by his Grand-father King Edward *the First and his Counsel, for retaining and preserving the antient Sovereignty of the Sea of* England, *and the Right of the Office of the Admiralty in the same, might be resumed, and continued, touching the correcting, interpreting, and declaring the Laws and Statutes lately ordained for the maintaining of Peace and Justice amongst the people of all Nations whatsoever, passing through the English Seas, and for punishing of Offences, and for giving of satisfaction to such as were damnified, which Laws and Statutes were corrected, declared, interpreted, and published by King* Richard *the First King of* England *in his return from the Holy Land, and were intituled Le Ley* Oleron *in the French tongue:*

And it is manifest, That the Law was continued all that Kings time, in regard that in the 49 year of his Reign, the selected Sea-men for the Inquisition at *Quinborough*, in the conclusion say, That touching some businesses proposed in the Articles of the Inquisition, they know no better advise nor remedy than that which had been formerly used and practised

ctiſed after the manner which is conteined in the *Law of Oleron.*

All which being admitted and duly conſidered, it may be preſumed, that ſuch Cauſes as did originally by Civil Law belong to the Admiralty, and what former Kings had antiently ordained for the regulating of the ſame, as likewiſe ſuch as were agreeable to the matters decided in the *Judgments of Oleron*, and what are conteined in the Inquiſition taken at *Quinborough*, in the time of King *Edward* the Third, were within the conuſance of the Admiralty Court, and conſequently the ſame are permitted to be tried and determined in the ſame Court by the Statute of the 13 of *Rich.* 2.

Touching the Judgments, Judicial Acts, and Book-Caſes intended to reſtrain the Admiral of *England* in exerciſe of his Juriſdiction as it is granted in the Kings Commiſſion, it may be anſwered in general, Firſt, That thoſe Judgments, Judicial Acts, &c. are in Cauſes of difference in reſpect of Juriſdiction betwixt the Courts of Common Law and the Admiralty Court, and it is incident to all profeſſions, where there is any competition or emulation with others, to incline

cline to that which is most to their advantage, Secondly, Such Judgment and Book-Cases have been grounded upon the common understanding of the Statutes, without any notice or respect to the Laws of the Sea, or the condition of Maritime Causes, the circumstances of the places being the chief Rule by which they have been framed. Thirdly, That many of them upon due examination may be found not so concluding as they are pretended, and although much respect and reverence be due to the Authours, yet we are not bound to believe that their judgments are infallible. Fourthly, That the Judicial proceeding as Prohibitions, being the results of the former authorities they may be weighed accordingly. Lastly, Touching the main piece, Sir *Edward Cooks Articuli Admiralitatis*, carrying the reputation of the Resolutions of all the Judges touching the matters therein conteined, it will appear that they very much differ from the Concessions of the Judges of the Kings Bench 1575, and from the Resolutions of all the Judges the 18 of *February* 1632, *subscribed unto by them, in the presence of King* Charls *and twenty Lords of his Counsel.*

The

The particular authorities which may be collected out of Sr. *Edward Cooks* Notes, to prove that the Admiral of *England* hath no conusance of things done within the Realm, but only of things done upon the Sea, are as followeth,

1 That in the 2 *Rich.* 2. *Hibernici sunt sub Admirallo Angliæ, de facto super alto Mari.*

2 That the 7 *Rich.* 2. in an Action of trespass brought for a Ship and Merchandises taken away, the Defendant pleaded that he did take them, *en le haut Mer, ou les Normans que la enemis la Roy*, and it was allowed a good Plea.

3 That *Fortescue* who lived in the time of *Hen.* the Sixth saith, *Siquæ super altum mare extra Corpus Comitatus in placito coram Admirallo deducantur per testes terminari debent.*

4 That *Dyer* in the time of Queen *Mary* saith, That by the Libel in the Admiralty Court, the Case is supposed to commence *sur le haut mer, & intra Jurisdictionem de l' Admiralty.*

To these authorities may be answered in general, First, That whereas some of them speak of *Altum Mare*, the Statute of the

the 13 of *Rich.*2. hath no ſuch Attribute, but mentions ſimply the Sea.

2 That the ſame Authorities granting that the Admiral hath juriſdiction on the Sea, do not declare, much leſs conclude, that he hath no juriſdiction elſewhere: And as to the particulars,

1 The Authority of 2 *Rich.*2. which affirms that the *Iriſh* were ſubject to the Admiral of *England*, for a thing done on the Sea, mentions not for what kinde of thing, and happily it might be for ſome offence againſt the Crown, or againſt the Peace, in offering violence to the Kings Subjects, or the ſubjects of his Allies; and in ſuch Caſes it might be underſtood, that he had Juriſdiction over the *Iriſh*, as over the Subjects of *England*, and other Nations, onely extending to the high Sea; but it cannot from thence be argued, but that if it were a buſineſs concerning Navigation, or Negotiation by Sea, he might alſo have had Juriſdiction over the *Iriſh*, as well as over other perſons, not onely *ſuper alto mari*, but alſo in other places elſewhere.

2 The Plea to the Action of Treſpaſs, in the 7 *Rich.* the 2. might be

good, and allowed in two respects; First, In regard the thing was done where the Country could take no notice, and therefore no Jury by twelve men could be had. Secondly, In regard the Ship and goods were taken from the Kings Enemies, against whom no Trespass could be committed, because that to offend them any wayes was lawfull; and in that respect the Plea might have been allowed, although the Ship and Merchandise had been taken in a Port, or Navigable River.

3. Whereas *Fortescue*, sayes, that things done upon the high Sea, prosecuted before the Admiral, ought to be determined according to the Proofs made by Witnesses, and no more, Sir *Edward Cook* affirms, That it proves by expres words that the Admiralty is confined to the high Sea: *Fortescue* having given reason for Trials by Jury, when the Neighbourhood of the Country could take notice of the business, Grants that for things done in other places, the Law of the Kingdome doth allow of proofs by Witnesses, as in Causes commenced before the Admiral for things done on the high Sea, and likewise before

fore the Constable, for things done beyond the Sea; so that it is evident he doth no more expresly confine the Admirals Jurisdiction to the high Sea, than he doth the Constables to places beyond the Sea; it being notorious that his Jurisdiction extends to Deeds of War, and Arms within the Land; as it will be proved that the Admirals Jurisdiction likewise to matters of Navigation, and Negotiation by Sea.

4 Touching the Authority of *Dyer*, that by Libel in the Admiralty Court, the Case is surmised to commence, *Sur la haut mer, &c.* It may be answered, that the Libels in the Admiralty, sometimes (as the busines falls out) declare, *Super alto mari & infra jurisdictionem Curiæ*, but ordinarily Causes are laid onely *intra fluxum & refluxum Maris & Jurisdictionem Curiæ*, and generally the Causes are no otherwise described, but *A contra B. in causa civili, & Maritima.*

Assert. 5 *That the Admiral of* England *may hold Conusance of Contracts, and Writings made at Land, touching busines of Navigation and Trade by Sea.*

BY an ancient Record in the Black book of the Admiralty (of which Mr. *Selden* takes notice) it appears, that it was ordained by King *Edward* the first, and his Lords, at *Hastings*, *Que comment divers Seigneurs avoient franchises*, &c. *That although divers Lords had divers Franchises to try Pleas in Ports, yet that neither their Steward, nor Bayliffs should hold any Plea, if it concerned Merchant or Mariner, as well for matter of Fact, as of Ships, Obligations, and other Deeds*; which although it extends onely to inferiour Lords, yet it may be said, that it was done in favour of the Admirals Jurisdiction, in such matters.

Notes upon Fortescue B 6. p 29. v. 557.

Secondly, by Commissions from time to time Granted by the Kings of *England*, to the Admirals, power is given, *Ad cognoscendum, &c. to hold the Conusance of Charter-parties*,

parties, Policies of Assurance, Bills of Bottomry, Bills of Lading, and of Sale of Ships.

Thirdly, The Causes and Sutes arising by occasion of businesses contained in such Writings have in all observable times and places been held to be Maritime, and the Conusance of them hath been allowed to Martim Courts, as it hath been before fully shewed; and it may be further considered, that such Contracts and Writings have their Original from ancient Maritim Laws, & are both in names and nature, things forein to the Laws of this Realm: And so much may be gathered from the order which *West* observeth in his Book of Presidents, where after the form of Deeds and Contracts proper to the Common Law, he handles those which concern Merchandizing and Trade by Sea, as things of a distinct and several nature.

Touching the particulars, First, Charter-parties seem to have been derived from the *Rhodian* Laws, by which it was provided, *Si quis navem conduxerit, instrumenta consignata sunto, If any man shall hire a ship, let there be Writings drawn and sealed thereupon.*

There is likewise mention of Charter-

Charter-parties in the Role of *Oleron*, and in the *French* later Ordinances, made for the reglement of the Admiralty of *France*, and it is ſuppoſed that no mention of them can be found in any Law or Statute of this Realm, until the 32 of King *Henry* the 8. *cap.*14. where the Conuſance of them is referred to the Admiralty, as it ſhall be hereafter ſhewed. Moreover *Malines* confirms, that anciently in Charter-parties it was expreſt, *That the Contents thereof ſhould be underſtood according to the Law of Oleron*; and at this time there are Clauſes uſually inſerted into them, enjoyning, That the Merchants beſides the payment of Freight, ſhall make allowance for *Primage*, *Average* and *Pettelodmenage*, things no where occurring in the Books of Common Law, and anciently determinable by the Law of *Oleron*.

Lex Mercat. p.1. cap.21.

Secondly, Policies of Aſſurance are grounded upon the Civil Law, which alloweth an Action for the undertaking a hazard which is doubtfull, for reward or conſideration firſt given, which is commonly called a *Præmio*, they are of later Civilians called *Sponſiones Mercatoriæ*, and *Aſſecurationes*, which *Malines* affirms,

P.1 cap. 24

affirms, were taken up in this Kingdome from the Laws of *Oleron*, practised on the Sea coasts of *France*, but it is manifest that now they are likewise in use in *Venice*, *Naples*, *Genua*, *Ancona*, *Spain*, and *Portugal*, and in other places where the affairs of the Sea are regulated by the *Civil Law*, *the Consolato*, *and Laws of Oleron*.

Thirdly, Bills of Bottomry, when an Owner, or Master of a Ship, to furnish his Voyage, takes up money upon extraordinary interest to be paid when the Ship arrives at the Port appointed, and thereby engages his Ship for the performance of the same, are grounded on the ancient *Grecian* and *Roman* Laws. *Julius Pollux*, a learned Expositor of tearms, or words used amongst the *Grecians*, calls a Bill of this kinde, ναυτικῶν συγγραφὴν, *quæ de nautico fœnore conscripta est*, of which *nauticum fœnus*, there are several Titles in the Digest and Code of the Civil Law, and the monies so lent to be transported at the hazard of the Lender, in the Civil law is called *Pecunia trajectitia*, of which *Salmatius*, *Pecunia trajectitia dicitur*, *quæ trans mare vehenda accipitur*, *& usuræ quæ ex pacto in eam pecuniam*

D. lib tit. 2 C. lib. 4. t. 33.

D. Usuris cap 2.

niam præſtantur, Maritimæ, & nauticæ dicuntur.

Fourthly, Bills of ſale of Ships are made conformable to Maritime Laws; for as *Weſt* in his Preſidents delivers the form, it is in ſuch Bills of ſale expreſt and declared, That he that ſells the Ship, bindes himſelf, his Executors, and Adminiſtrators, the ſaid Ship ſo bargained and ſold, to warrant and defend, againſt all men, for one whole year, and a day, *according to the Law* of *Oleron*, the danger of the Sea, Fire, and Enemies, onely excepted.

Theſe things being conſidered, it may be thought reaſonable, that ſuch Contracts and Writings being grounded upon the Civil Law, the Laws amongſt Merchants, and other Maritime Laws, the Sutes ariſing about the ſame ſhould rather be determined in thoſe Courts, where the proceedings and Judgements are according to thoſe Laws, than in other Courts which take no notice thereof.

For the reſtraining of the Court of Admiralty from proceeding in Sutes ariſing from ſuch Contracts and Writings made at Land, although the buſineſſes

nesses therein contained, are to be performed at Sea, amongst the Authorities cited by Sir *Edward Cook*, there may be intended appliable to this purpose, First the Act of Parliament of the 15. of *Richard* the 2. Chap. 15. Secondly, some judgements given, and Prohibitions granted in the Courts of Common Law, concerning causes of this sort, commenced in the Admiralty.

Touching the Statute of the 15. of *Richard* the 2. Chap. 34. which is the ground of the main Objections against the Admirals Jurisdiction, it may be conceived, That whereas that of the 13. Chap. only in general restrains the Admirals from medling with things done within the Realm, and allows them to meddle with things done on the Sea, that is relating to the Sea, This Statute was intended to declare more expresly, both in what places, and in what matters they should not meddle, And touching the places, in regard *the word Realm, as Sir* Edward Cook *observes, in a general sence extends to the Sea within the Kings Dominions, as well as to the Land*, declares the restraint, to be only *within the bodies of Counties*, And it may be supposed

Comment in Littleton Sect. 43.

poſed that he intended a difference betwixt the Bodies and the Extremities or bounds of Counties, as the Statute of the 3. of *Edward* 1. makes a difference betwixt things done *within the Shires, and things done within the Marches, and Borders of Shires*, whence the Statute of the 5. of *Elizabeth*, Chap. 5. allows to the Admirals Juriſdiction, as the main Sea, ſo alſo the Coaſts of the Sea, being no parts of the Bodies of any Counties of the Realm, and in that reſpect this Statute ſpecially excepts from the Admirals Juriſdiction, the Conuſance of wreck of Sea, as happening on the Coaſts or Shores of the Sea, out of the bodies of any Counties, ſo that as to the place, or Territory of the reſtraint, this Statute declares it ſtreighter, than that of the 13. of *Richard* the ſecond.

Touching the matters, with which the Admiral by this Statute is not to meddle within the bodies of Counties, they are expreſsly declared. Firſt *Contracts, Pleas, and Quarrels*, That is perſonal Actions concerning Contracts; and Secondly are implyed matters Criminal, and the proſecution of them.

Touching the Firſt, which concern this

this Aſſertion, the words are, *That the Court of Almiralty hath no manner of Conuſſance of any Contract, Plea, or Quarrel, riſing within the bodies of any Counties; But all ſuch Contracts, Pleas, and Quarrels ſhall be tried, determined, and remedied by the Common Law.* Which words are ſo general, that it is pretended, they ought to be underſtand of all Contracts, and Writings whatſoever, even of ſuch as concern Sea buſineſſes, if they be made, or written within the Bodies of any Countries.

In anſwer whereunto, there may be taken into conſideration, a General Rule cited by Sir *Edward Cook*, allowed as he ſaies by all Laws, in conſtruction of Statutes, viz. *Quamvis lex generaliter loquatur, reſtringenda tamen eſt, ut ceſſante ratione, & ipſa ceſſet, cum enim ratio ſit anima, vigorque ipſius legis, non videtur legiſlatur id ſenſiſſe, quod ratione caret, etiamſi verborum generalitas prima facie aliter ſuadeat.* And the reaſon of this Statute, as may be gathered from the Præamble, as the Key thereof, was to hinder the Admirals encroaching of divers Juriſdictions, Franchiſes, and Profits pertaining to the King, and other Lords, beſides *thoſe they*

Juriſdict. of Courts p. 330.

were

were wont or ought to have of right; by which words it is acknowledged, that the Conusance of some matters did formerly belong to that Jurisdiction; And not to diminish any of their Ancient and just rights in things belonging to the Sea, which are permitted, and allowed to the Admiral, by the Statute of the 15. of *Richard* 2. and unto which neither the Kings Courts, nor the Courts of any other Lords had formerly before this Statute any pretence.

Sir *Edward Cook* in his Answers to the 1. Objection of the Complaint, 8°. *Jacobi*, saith, That the Judges acknowledge, that of Contracts, Pleas, and Quarrels made upon the Sea or any part thereof, &c. the Admiralty hath and ought to have Jurisdiction, and that no President can be shewed, that any Prohibition hath been granted for any Contract, Plea, or Quarrel concerning any Marine cause made or done upon the Sea. By which words he implies, that although the Admiral had and ought to have Jurisdiction upon the Sea, yet it was only concerning Marine Causes, but if a Contract, Plea, or Quarrel were made or done upon the Sea concerning any Terrene

rene Cauſe, or matters concerning buſi-neſſes of the County, a Prohibition might be granted. Now it may ſeem worthy of Conſideration, whether any Reaſon can be ſhewed why the Courts of Common Law ought to have cogni-zance of Contracts, Pleas, and Quarrels which concern Terrene Cauſes, or Mat-ters concerning buſineſſes of the County, made or done upon the Sea; Yet if Contracts, Pleas, or Quarrels, which concern Marine Cauſes, or Matters be-longing to the Sea, be made or done within the Bodies of Counties, the Ad-miral ought not to have the like Cog-nizance, And if no reaſon thereof can be ſhewed, how according to the gene-ral Rule which Sir *Edward Cook* delivers touching the Conſtruction of Statutes, the common Interpretation which is made of that of the 15. of *Richard* 2. Chap. 3. by which Contracts, Pleas, and Quarrels ariſing within the Bodies of Counties, are extended to Contracts, Pleas, or Quarrels relating to Marine af-fairs, can be juſtified, the reaſon of the Rule being, *Cum Ratio ſit anima Legis, non videtur Legiſlator id ſenſiſſe, quod ra-tione caret, etiamſi Verborum generalitas, prima facie aliter ſuadeat.* And

And that the place only, where a Contract is made or written, should alter or transferr the Jurisdiction to the Courts of Common Law, may seem very unreasonable, for the reasons following.

First, for that Contracts, Pleas, and Quarrels, being things incorporeal, or matters of right, may more properly be said to arise from that, from which they are caused, or occasioned, than from the place where they happen to be made, and so Contracts, Pleas, and Quarrels occasioned by the businesses of the County, may be said to arise within the Body of the County, and Contracts, Pleas, and Quarrels occasioned by the businesses of the Sea, may be said to arise from the Sea, in what places so ever they happen to be made, or Written. So it is properly said, *Ex facto jus oritur, & actio oritur ex delicto.* Because the Law results from the fact, and the Action is occasioned by the fault. So where the Jurisdiction of the Admiral of *France*, is said to be, *pour le fait de la Mer*, Mr. *Selden* renders it in Latin, *ob causam aliquam à re maritima ortam*, and *Salmatius* (as before) saith, *usuræ propter pecuniam trajectitiam præstandæ maritimæ & nauticæ vocantur,*

Artic. 49.

De Usuris c. 2.

vocantur, etſi nummi in terris dantur.

Secondly, that the end of a Contract, being to have ſomething performed, and Pleas and Quarrels are occaſioned by the non-performance, or ill performance of the ſame, The place of performance is more conſiderable, than the place where the Contract was made, or written; So *Ulpian* a famous Roman Lawyer ſaith, *Mulier exigere dotem illic debet, ubi maritus domicilium habet, non ubi inſtrumentum dotale conſcriptum eſt, nec enim id genus contractus eſt, ut tam eum locum ſpectari oporteat, in quo inſtrumentum dotis actum eſt, quam locum domicilii, in quem mulier per conditionem matrimonii reditura erat, When a Dowry is to be reſtored to a Wife, after her Husbands death or divorce, it is not to be eſtimated, according to the value of things where the inſtrument or deed of the Dowry was made, but according to the value of the place where the Dowry was to be made good, that is the place, where her Husband lived.* *l. exigere, D. de Judiciis.*

Thirdly, for that if the Queſtion be whether a Maritime Contract were made or no, it may be determined by a jury of the place, But if the Plea or Sute be (as moſt commonly it is) whether the

the Contract be performed, or not performed, it cannot be determined but upon proofs, made from the place of performance, of which the Vicinage to the place where the Contract was made, can take no notice, and therefore it is improbable that the Statute ſhould intend that ſuch Sutes ſhould be tried, diſcuſſed, and determined only by the Courts and courſe of Common Law.

Fourthly, the Common Law is not ſo ſtrict, but that according to the nature of the buſineſs, it allows Juriſdiction to other Courts; For although Promiſes and Contracts of money, are generally Pleadable in the Courts of the Com-

Donatio in Matrimonium.

mon Law, yet as *Bracton* writes, *cauſæ de rebus promiſſis ob cauſam matrimonii, in foro Eccleſiaſtico terminari debent, quia cujus juris, id, & juriſdictionis, eſt principale, ejuſdem erit acceſſorium*; And in an other place he gives a reaſon for the ſame, *quia ſemper videndum propter quid aliquid ſit, vel promittatur.* And again, although Sutes touching Tenures and Services belong to the ſame Courts of Common

Sect. 136. Law, yet *Littleton* ſhews, That if *Tenants in Franck Almain, fail to perform divine Service, the Lord may complain thereof to*

the

the Ordinary; and Sir *Edw. Cook* in his Comment thereupon observes, that the *Law doth appoint every thing to be done, by those to whose Office it properly appertain'th, and so saith he, the Lord hath remedy for his Divine Service (albeit it issue out of temporal Lands) in foro Ecclesiastico, by the Ecclesiastical Court.* And certainly if what constructions are made of the Law, were made of this Statute, it would be more easily admitted, That a Maritime Contract, although made, or written within the County, should be tried before the Judge of the Admiralty, whose Office it is to determine Maritime causes.

Thirdly, For the better discerning of the meaning of this Statute, it is offered to consideration what hath been the sense of Parliaments in preceding and subsequent Statutes; as first in the Statute of the Staple made in the 27 of *Edw.* the 3. in 3 *Chap.* where it is declared, *That the Mayors and Constables of the Staple, shall have Jurisdiction and Conusance within the Towns where the Staple shall be, of all manner of things touching the Staple, which shall be ruled by the Law Merchant, and not by the Common Law of*

the Land, nor by the usage of Cities, Burroughs, or other Towns, &c. So that all manner of Contracts and Covenants made betwixt Merchant, and Merchant or other, where one party is a Merchant, whether *the Contract be made within the Staple, or without*, the Plaintiff may sue his action or Quarrel before the Justices of the Staple by the Law of the Staple, unless he make choice to sue in some other place of the Common Law; from which may be observed, First, That the Merchants businesses, by the Judgement of the Parliament, were held fitter to be regulated by a special Law, *viz.* the Law-merchant, than by the common Laws or customes of the Countries. Secondly, That where Contracts or Covenants did concern Merchandize, or matters belonging to the Staple, it was not thought considerable, to point of Jurisdiction, whether the Contract or Covenant were made within or without the precincts of the Staple.

The susequent Statutes are that of the 32 of *Hen.* 8. *Chap.* 14. which declares that the Court of Admiralty may hold plea of Charter-parties and that of the 43 of *Elizabeth*, *Chap.* 12. which hinders

hinders the Courts of common Law from medling with Policies of Assurance, which two things are the main matters endeavoured to be maintained by the Statute of the 15 of *Rich.* the 2. to belong to the Conusance of the Courts of common Law, because they are usually made at Land, within the bodies of Counties.

The Statute of the 32 of *Hen.* 8. *Ch.* 14. prohibiting the employment of Forein ships, ordained, concerning the shipping of this Kingdome, *That the Owners, or Masters make their departure from the Port of* London, *after the Freighting, or Lading of the Ship, as soon as wind and weather will serve, according to the Charter-party made betwixt the Owner, or Master, and the Merchants, without protracting of time, and also that they, and every of them to his power, shall see and provide that all Wares and Merchandises, which shall be by the said Merchants, and their servants brought into any Ship or Vessel, shall be honestly and in good order saved and kept; Provided alwayes, that if any Merchant stranger, or other, finde himself grieved, or damnified, by negligent keeping of his wares, or Merchandises, or by long delaying, or protracting*

of time, in making of the Voyage, by the said Owner, his Master, or any of the Mariners of the said Ship, otherwise than shall be agreed in, or by the said Charter-party, not having been letten by wind or weather, he shall and may have his remedy by way of complaint, before the Lord Admiral of England *for the time being, his Lieutenant, or Deputy, against the said Owners or Masters, who shall or may summarily, and without delay take such order therein, as shall be thought to their discretions most convenient, and according to right and justice in that behalf.* It is true, that the Cases expreſt, are for the Merchants to recover ſatisfaction for delay, or damage done to their goods, according to the Charter-party from the Owners, and the Maſters of Ships; and it were very unreaſonable, if the Maſter or Owner having duely performed their Voyage, might not ſeek the like remedy before the ſame Judge againſt the Merchants, not obſerving the Charter-party, either in not Lading their goods within the time appointed, or not paying the Freight according to agreement in the ſame contained and expreſt, the cauſes being *hinc inde* reciprocal, and it being ſometimes

times held an absurdity, *Illud quod in uno eodemque judicio terminari potest, apud diversos Judices ventilari.*

The Statute of the 43 of *Elizabeth*, *Chap.* 12. declares, *That whereas differences growing upon Policies of Assurance had been ordered by discreet Merchants, approved by the Lord Mayor, who did speedily decide those Causes, until that of late years, divers persons did withdraw themselves from that arbitrary course, and have sought to draw the parties assured, to seek their monies of every several assurers by Suites commenced in her Majesties Courts, to their great charges, and delay, thereupon it was enacted, that a Commission should be granted, giving power to certain Commissioners* (the first whereof is the Judge of the Admiralty) *to order and decree such Causes, in a brief and summary course, without formalities of pleadings and proceedings.* *Malines* affirms, that he amongst others, was one who upon experience of the great inconveniences which followed upon the drawing of those Causes, to the Courts of Common Law, solicited the Parliament to pass that Act. P. 1 c. 24.

The Legal authorities which may be conceived to be intended to debar

the Admiral from the Conusance of Contracts, and writings made at Land, touching things to be performed at Sea, or such as shew that since the making of the Statute of the 15 of *Rich.* 2. *Chap.* 3. and not before, the Courts of Common Law have admitted, and held Pleas of Charter-parties, of Policies of Assurance, and declared something concerning Mariners wages. Touching Charter-parties, it is shewed first that in the 31 of *Hen.* 6. an Action was brought upon the Statute, of double damages, by *William Hore* against *Jeffery Unton*, who had sued the said *Hore* in the Admiralty for fourscore pounds upon a Charter-party of Freightment of a Ship of the said *Jeffryes*, imployed to go towards *Island*, in regard, *Contractus ille apud novam Sarum infra corpus Comitatus, & non super alium mare factus, & junctus fuit*; whereupon damages were assessed against the Defendant to an hundred Marks, and costs to 40 l.

Again, that in the 28 of *Elizabeth* in the Kings Bench, upon a Charter-party, by a Deed indented which was made at *Thetford* in the County of *Norfolk*, *Euangelist Constantine* sued *Hugh Glynn*, for

for the breach of Covenant, in not staying at *Mustrel* in *Spain* so many dayes as were limited by the Covenant, whereupon he was condemned in 500 l. and in arrest of Judgement it being shewed, That the issue did arise out of a place in a Forein Kingdome from whence no Jury by Twelve men might be had, and that therefore the trial was not sufficient, Sir *Christopher Wray*, and the whole Bench resolved, that the Plaintiff should recover 500 l. besides the costs and damages, becausе the Charter-party was made at *Thetford* within the Realm.

Concerning Policies of Assurance, That in the 38 of *Hen.* 8. in a Case betwixt *Crane* and *Beil*, touching a promise made at *Dartmouth*, That the Ship should pass without taking, which was afterwards surprized by the *Spaniard* upon the high Sea, it was held not determinable in the Admiralty, for although the taking were upon the Sea, yet the promise was upon the Land.

Again, that in the 36 of *Elizabeth*, an Action of the Case was brought in the Kings Bench upon an Assumpsit, from a Policy of Assurance, where it was

undertaken, That a Ship ſhould ſail ſafely from *Melcomb Regis* & *Abbevil* in *France*, the Ship being arreſted by the *French* King in the River of *Somme*, in the Realm of *France*, and the matter was there adjudged: To which may be added what S^r *Ed. Cook* delivers for Law in *Dowdales* caſe, *Cum combein le contract comme le performance, &c.* when *as well the Contract as the performance of it, is wholy done beyond the Sea, and it ſo appears, the Trial fails at the Common Law*: But here, ſaith he, the Aſſumpſit was made at *London*, which is the ground and foundation of the Action, and therefore the Trial of neceſſity ſhall be there, or otherwiſe it ſhall not be tryed at all; and the Arreſt which is in iſſue is not the ground of the Action, but the Aſſumpſit, *&c.*

Touching Mariners wages is, that of the Book of 48 of *Edw.* 3. where it is ſaid, That if a Mariner make a Covenant with one to ſerve in a Ship on the Sea, yet if his wages be not paid, they ſhall be demanded in that Court, by the Common Law, *Nemy per ley Mariner.*

To theſe Authorities it may be replied in general, that all, but the laſt, are grounded upon the commonly received

ceived ſenſe of the Statute of the 15. *Rich.* 2. that the Contract doth riſe only there, where it is made or written, with out any reſpect to the nature of the buſineſs, and the occaſion thereof, from whence in truth it doth more properly ariſe; And whereas other acts of Parliament have in ſome ſpecial points ordained and declared otherwiſe, it may be hoped that it may not be held a crime unexcuſable, if a man ſhould doubt of the reaſonableneſs of thoſe authorities.

Touching the particulars, As Firſt of the 31. of *Henry* 6. betwixt *Hore* and *Unton*, wherein double Dammages were given for ſuing in the Admiralty Court upon a Charter-party, it is ſaid, that the Sute was upon a Charter-party of Freightment, for four ſcore pounds, It doth not appear that it was for the freight of the Ship, although it be moſt probable; and if it were ſo, why the Maſter of the Ship ſhould not as well ſue for his freight, by virtue of the Statute of the 32. of *Hen.* 8. as the Merchant by vertue of the ſame Statute, might ſue in the Admiralty for dammage done to his goods, aboard a Ship, contrary to the Charter-party, without any reſpect to the

the place where it was made? if no reason can be shewed, that Judgment may be thought not to have been grounded so much upon reason as it was upon the common received opinion of the meaning of that Statute, as it is therein related, *quia contractus ille apud novam Sarum, factus & junctus fuit.* Touching that of the 28. of *Elizabeth*, whereby *Glynn* was condemned to *Constantine* for breach of Covenant, in a Charter-party, in the summ of 500. l. it seems a Case far more reasonable, though something grievous, because it is not denied, but that a sute upon a Charter-party may be commenced at the Common Law, upon a penalty, as it seems that was, for breach of Covenant, in not staying at *Madrill*, so many dayes as were limitted by the Charter-party, Only that is thought no concluding argument, against a sute in the Admiralty for freight grounded on a Charter-party; But whereas when in the Arrest of judgment, it was alleged that the Trial was not sufficient, because the issue did arise out of a place in a Forein Kingdome, from whence no Jury, by Twelve men might be had, Sir *Edw. Cook* sayes that Sir *Christopher Wray* and the

the whole bench reſolved, That the Plaintiff ſhould recover coſt, and dammages, becauſe the Charter-party was made at *Thetford* in *Norfolk*, within the Realm, it is as much as if Sir *Edw. Cook* had ſaid, that whether the ſuggeſtion in the iſſue, were true or falſe, tryed by a competent, or incompetent Jury, yet if the ſute were brought upon a Charter-party, the Conuſance thereof did belong to the Common Law, and whether the former Judges, had proceeded well or not, was not material, ſo that what is premiſed formerly touching Judgments and judicial Acts, in the *Firſt* Chap. may from this caſe be excuſed.

And as touching the infinite prohibitions granted upon ſutes commenced in the Admiralty concerning Charter-parties, there may be ſomething declared, and made appear reaſonable hereafter, in an other place.

As to the inſtances of Policies of aſſurance held tryable at the Common Law, although by the Statute of the 43. of *Elizabeth*, it hath been ſhewed, that the proceedings in thoſe cauſes at the Common Law, were altogether inconvenient to the Kingdome, yet in regard Sir

Sir *Edward Cooks* reasons in *Dowdales* case for the maintaining of proceedings in such businesses, may be applyed to other matters, to the prejudice of the Admiralty Jurisdiction, something may be observed concerning the same, in Sir *Edward Cooks* reasons, as first, That the Assumpsit is the ground, and foundation of the Action, and that the Arrest, or Imbargo in that case had been no ground of an Action, if there had been no Assumpsit, neither could the Assumpsit have produc'd an Action, if there had not been an Arrest. But what was the neareſt, and immediate ground of the Action? without doubt, the Arrest, And what was chiefly in question? not the Assumpsit, for it was taken for granted, that that was done in *London*; but it was the Arrest, which (as it was declared) was in issue; And it is likely that the Common Law which intended a Trial of the Vicinage, intended it of the thing or matter which was in issue, to be tried. But he further argues, That the Trial must be of necessity where the Assumpsit is made, for otherwise there could have been no Trial, at the Common Law, which might have savour'd of some

ſome reaſon, If poſſibly there could have been no Trial in any other Court, but the Cauſe being Maritime, and amongſt Merchants, it might more properly, have been tried in the Admiralty or in the Aſſurance Court, without a Jury, or Trial of Twelve men, by witneſſes, as *Forteſcue* acknowledgeth.

Thirdly, touching that of the Book of 48. of *Edward* the 3. where it is ſaid, That if a Mariner make Covenant only to ſerve in a Ship on the Sea, yet if the wages be not paid, they ſhall be demanded in that Court, by the Common Law, not by the Law Mariner, the occaſion was, that an action of debt being brought at the Common Law, upon an Obligation dated at *Harfleet in Kent*, whereas in truth it was made in *Normandy*, and the conſideration was Service done in Warr in *France*, thereupon one of the Judges ſaid, That the ſumm demanded growing due for Service done in Warr, the Cauſe ought to be tryed in the Conſtable, and Marſhals Court; Another (as it ſeems willing to retain the cauſe) ſaid that he hired a man to go in a meſſage to *Rome*, although the ſervice were done in another Realm, yet what was due by covenant,

covenant, might be recovered in that Court; Another said, if a Mariner make a Covenant with one to serve in a Ship on the Sea, yet if his wages be not paid, they shall be demanded by the Common Law, &c. So that it is plain it was not a Resolution of the Court, but a *suit dit*, as they say, and one mans opinion, by way of argument to another purpose; And the ground thereof might be, that if it were in issue whether such a Covenant were made, it might be tryed at the Common Law, but it doth not conclude but that if the Question were, whether the service in the Ship were performed on the Sea, it might more properly be tryed in the Admiralty Court.

For confirmation on this point.

First, To the 4. Request of the Judge of the Admiralty to the Lord Chief Justice of the Kings Bench 12. *May*, 1575. *viz.* That the Judge of the Admiralty may have and enjoy the knowledge of the breach of Charter-parties made between Masters of Ships and Merchants for voyages to be made to the parts beyond the Sea, according as it hath been accustomed, time out of mind, and according to the good meaning of the Statute

tute of 32. *Hen.* 8. *chap.* 14. though the ſame Charter-parties be made within the Realm, The anſwer is, *This is agreed upon for things to be performed upon, or beyond the Seas, though the Charter-party be made upon the Land, by the Statute of* 32. *Hen.* 8. *chap.* 14.

Secondly, it was agreed unto by all the Judges and Attorney General before the King and his Counſel, *That if a Sute be before the Admiral, for Freight or Mariners wages, or for breach of Charter-parties for Voyages to be made beyond the Sea, although the Charter-parties happen to be made with in the Realm, and although the money be payable within the Realm, ſo as the penalty be not demanded, a Prohibition is not to be granted.* But if the Sute be for the penalty, or if the Queſtion be made whether the Charter-party were made or not, or whether the party did releaſe, it is to be tryed by the Kings Court at *Weſtminſter*, So that at firſt it be denied upon Oath that a Charter-party was made, or a denial upon Oath tendred, to which it may be added, that it was there further agreed, *That if Sute ſhall be made in the Court of Admiralty, for building, amending, ſaving, or neceſſary victualling of a Ship, againſt*

against the Ship it self, and not against any party by name, but such as for his interest makes himself a party, no Prohibition is to be granted, though this be done within the Realm.

Assert. 6 *That the Admiral of* England *may hold Conusance of things done in Ports, and Navigable Rivers, as touching Dammages done to persons, Ships, and goods, Annoyances of the Publick passage, and unlawfull fishing.*

FIrst it is apparent that Ports, and Navigable Rivers are places where Maritime businesses, and causes of difference concerning the same, may happen, as well as on the main Sea it self, and in truth are more proper for such affairs, than for any ordinary businesses of the Land, *Portus* (saith *Ulpian*) *est locus conclusus quo importantur merces & exportantur*, and importation, and exportation of goods

l. 39. D. de verb. signif.

goods do chiefly concern Navigation, and Merchants affairs.

Secondly, *Flumina navigabilia*, that is navigable Rivers, are of the same condition and use, and it is allowed by the Common Law, *that every water which flows and reflows, is an Arm of the Sea*, and Mr. *Selden* maintains that Navigable Rivers, are in the Kings special Dominion, and Protection, and under the King, within the Jurisdiction of the Admiral: for he shewing the difference betwixt the Admiral of *France*, and the Admiral of *England*, saith, *the Government of Rivers, which are in the Dominion of the King of* France, *belongs not to the Admiral of* France, *but to the special Jurisdiction of those who are called the Presidents or Masters of the Waters, and Forests: for the Publick Rivers, as he affirms, within the limits of that Kingdome, belong wholly to another Office, and not to that of the Admiral, as it doth to the Admiral of* England. *De Dominio Maris lib. 2. cap. 18.*

Thirdly, it is evident by the Judgements of *Oleron*, established for Law in the Admiralty of *England*, That many causes are resolved concerning Dammages done by one Ship to another, sailing in the River, and for falling foul one up-

on another, in the Port or Harbour, as alſo for loſs done to Merchants goods in the Ports of diſcharge, by miſcarriage, in the unloading, by reaſon of unfit coardage, and tackling. It may likewiſe be ſhewed out of the Inquiſition taken at *Quinborough*, that many things done in Ports and Navigable Rivers, are within the Juriſdiction of the Admiralty, as Ship-wrights taking exceſſive wages, removing of Anchors, cutting of Buoy ropes, and taking Salmon at unſeaſonable times, the uſing of unlawfull Nets, the ſpoyling of Beds of Oyſters, the dregging for Oyſters and Muſſells at unſeaſonable times, and divers other matters. Againſt the Admirals Juriſdiction in this reſpect are pretended likewiſe Statutes, Book-caſes, Judicial Acts, &c. by which it is endeavoured to be proved, That the Admirals Juriſdiction is confined only to the high Sea, and wholly excluded from things done in Ports, and Navigable Rivers, which are ſaid to be within the bodies of the Counties of the Realm. The firſt Statute is that of 15. *Richard* 2. which declares, that the Court of Admiralty hath no manner of Conuſance, Power, or Juriſdiction of any Contract, &c.

&c. or any other thing rising within the Bodies of Counties, either by Land, or by Water; which later part is so General, and uncertain, that according to the General rule delivered by Sir *Edw. Cook* before mentioned, *lex generaliter loquens restringenda est, &c.* for by the general understanding of it, as it is most generally understood, by the Professors of the Common Law, it doth not only debarr the Admiral from the Conusance of those causes, which he is supposed to have encroached to the prejudice of the Courts of Common Law, but also from the Conusance of those things, which they were wont, or ought to have of right, contrary to the expres meaning of the Præamble of that Statute, as all those Causes which before this Statute did belong to the Admiral by the Roll of *Oleron*, and the Inquisition at *Quinborough*.

But it may reasonably, and probably be conceived, that the Statute intending to restrain the Admirals Jurisdiction, intended by the words, *Other things in general*, such things, about which Actions and Sutes at the Common Law might arise, And having before mentioned

Contracts, Pleas, and Quarrels, wherein private persons might have an interest by way of personal Actions, did afterwards add *other things arising within the Bodies of Counties*, intending thereby publick offences, and such as are against the Crown, as Treason, Murther, Manslaughter, Mayhemes, Robbery, Trespasses *vi & armis*, and the like, which interpretation, First is agreeable to the Præamble, which mentions encroachments upon the Jurisdiction, &c. pertaining to the King. Secondly, because the Statute ordaining that such things shall be tryed, discussed, and determined by the Laws of the Land, and not before the Admiral; seems to intend things, which might be tried either way, as Offences of that Nature, which done on the Sea, might have been tried before the Admiral, and being done on the Land were to be tried in the Courts of Common Law. Thirdly, because the reservation in the conclusion of the Statute Provides, that nevertheless of the death of a man, or Mayheme done in great Ships, being, and hovering in the main stream beneath the Bridges next to the Sea, the Admiral shall have Conusance,

lance, which being in the nature of an Exception, implies, that the things before mentioned in general, were to be understood of Offences, or matters of the same nature, and condition.

Sir *Edward Cook* where he cites the Statute of 15. *Rich.* 2. notes, that it was to be observed, how curious the makers of it were, to exclude the Admiral from all manner of Jurisdiction, within any Water which lyeth within any County of the Realm; but if his words be considered, his curiosity goes far beyond them, for whereas the words of the Statute Anciently and generally have been received, only beneath the Bridges next or nigh the Sea, he renders it only beneath *the Points of the same Rivers*, The French word *Pounts*, being easily turned into *Points*, which Criticism might have the better passed, if it might be known what were meant by *Points of Rivers*; we understand by *Points of Land*, some extreme parts or ends, which in respect of the rest, are of a more accute figure, but Rivers towards the Sea, (which way the Criticism looks) grow broader, or wider, far from any Angular acuteness; Again, we commonly say above, or b-

neath the bridge; but if we speak of the extremites, we say behither or beyond, within or without the Lands end; besides, whereas the words in that place are ships riding in the main stream of Navigable Rivers, it may be doubted where that main stream can be found beneath the points of the River.

The former reading of the Statute, *viz. beneath the Bridges*, is agreeable to an ancient Edition of the Statutes at large printed 1543. above a hundred years since; so *Rastals* Abridgement, and *Poultons* Collection of the Statutes, and is so received by *Crompton* in his Jurisdiction of Courts, where he writes of the Admiralty, according to the Statutes. It is further confirmed by a manuscript Copy of the Statutes in *French*, in the Library of *Merton* College in *Oxford*, in which are these words, *Niene meyns de mort de omme, & de mayheme, engrosses neifs, estants & overantes, a my le haut flo des grosses reviers tant seculament, par-avali des pounts, des mesmes les riviers, & L'n Admiral conusance.*

The second Statute that may be applied to this purpose is that of 5 *Elizabeth, Chap.* 5. which relating to divers things

things made offences by that Statute, ordains, *that all and every of the said offences, done on the main Sea, or Coasts of the Sea, being no part of the bodies of any Counties of the Realm, and without the Precincts, Liberty and Jurisdiction of the Cinque Ports, and out of any Haven or Pier, shall be determined by the Lord Admiral.*

Touching this Statute it may be observed, That the end thereof was according to the Title, for the maintenance of the Navy, and as for a mean to that end, for the imploying of *English* shipping, especially for the bringing in of Fish, for which purpose it provides, That Wednesdayes should be held Fishdayes; That none shall demand toll of Fish brought in Subjects ships; That no Herring unsalted should be bought out of strangers bottoms; besides, that no Wares should be carryed from Port to to Port; and that no Wine, nor Woad shall be brought in but in *English* ships, of which businesses it might be more fit for the Officers of Corporate Sea-Towns to enquire, than for the Admiral, which the Parliament understanding, might without prejudice to his Jurisdiction in other matters except

from him touching offences of that kinde, the enquiry within Havens and Piers.

Besides, whereas Sir *Edw. Cook* recites the words, *That all such Offences shall be tryed before the Admiral*; the words of the Statute are, *before the Lord Admiral of* England, *or his Lieutenant or Deputy or Deputies, and other Justices of Oyer and Terminer, according to the form of the Statute of the* 28 Hen. 8. *for Causes of Piracy.* So that it concerns not the Admiral in his ordinary capacity, but as he is chief in that Commission. And whereas Sir *Edw. Cook* from this concludes, That by the Judgement of the whole Parliament, the Jurisdiction of the Admiral is wholy confined to the Sea, and Coasts of the Sea, being no parcel of the County, how strongly soever he conceives it, under favour it is no good argument, to infer from these new created offences, of which he is to enquire in an extraordinary way, that he hath no Jurisdiction in other matters, which did formerly belong unto him, especially touching Navigable Rivers, of which in this Statute there is no mention, nor exception.

More-

Moreover, whereas the Judgement of the Parliament in this Statute is ſo confidently urged for the limiting of the Admirals Juriſdiction, it is deſired, that to the points in queſtion, two other Statutes, the one long ſubſequent to that of *Rich.*2. the other not long preceding that of the 5 of Queen *Elizabeth*, may be taken into conſideration.

The firſt is that of 28 *Hen.* 8. *Chap.*15. concerning the trial of Piracies, and other crimes committed within the Admirals Juriſdiction, wherein it is declared, *That all Treaſons, Felonies, Murthers, Robberies, Confederacies committed in or upon the Sea, or in any other Haven, Creek or place, where the Admiral, or Admirals have, or pretend to have Juriſdiction, ſhall be enquired, tried, heard, or adjudged by the Admiral, and others appointed by the Kings Commiſſion under the Great Seal, in ſuch Shires and places of the Realm as ſhall be limited in the Commiſſion, as if any ſuch offence had been committed upon the Land*, &c.

The end of this Statute was, that whereas Piracies, and other offences committed within the Juriſdiction of the Admiralty, were formerly tryed according

cording to the Civil Law, and Offenders could be convicted onely by confeſſion of the parties, and proofs by Witneſſes, to reduce the Trial of the ſame to the courſe of the Common Law by a Jury of Twelve men; by which Statute, although the Manner of the trial of Offences were altered, yet the Limits of the Admirals Juriſdiction are allowed to extend not onely to the Sea, but to Havens, Creeks and places, where the Admiral, or Admirals have, or pretend to have Juriſdiction. And in the Commiſſion of Oyer and Terminer grounded on that Statute, the places of Offences committed, to be heard and determined before the Admiral, and others, are thus deſcribed, *Tam in aut ſuper mari, aut aliquo portu, vivo, Aqua dulci, Creca, ſeu loco quocunque infra fluxum maris ad plenitudinem, a quibuſcunque primis pontibus verſus mare, quam ſuper littus maris, & alibi ubicunque infra Juriſdictionem noſtram Maritimam, aut limites Admiralitatis Regni noſtri, & Dominiorum noſtrorum:* By which words, not onely power is given to hear and determine offences in thoſe places; but it is likewiſe declared that thoſe places do belong

long to his Majesties Maritime Jurisdiction, and of his Admiralty.

The second Statute is that of the first of *Elizabeth*, *Chap.*17. made for the preservation of Spawn and fry of Fish, and the remedies thereof being provided, it is ordained, *That the Lord Admiral of* England, *and the Lord Mayor of* London *for the time being, and all and every other, which lawfully have, or ought to have any conservation, or preservation of any Rivers, streams or waters, shall have power to enquire according to that Act*, which plainly shews, that the Parliament then conceived, that the Admiral of *England* had power and Jurisdiction to some purposes in Rivers and Streams, salt and fresh, otherwise, he had not been named in the first place, amongst those who had right of conservation of the same.

The Jurisdiction of the Admiralty as to publick offences and causes criminal since the Statute of 15 *Rich.*2. hath been so well settled by the Statute of 28 *Hen.* 8. that there can be little occasion of difference touching those matters betwixt the Courts of the common Law, and the Court of the Admiralty; yet Sir

Sir *Edw. Cook* having unnecessarily collected many other legal authorities which may be applied to maintain that by the Common Law the Admirals Jurisdiction did not extend to Ports and Navigable Rivers, it may not be amiss to examine the grounds and weight of the chiefest of them, which may be reduced to two heads; First, such as shew that Havens and Navigable Rivers are within the bodies of Counties, and that the common Law hath held plea of things done in them. Secondly, That the Courts of common Law have punished such as have sued in the Admiralty Court, for things done in Ports and Navigable Rivers.

Touching the first, these Authorities might be intended.

First, That in the time of *Edw.* the first, a Replevin was brought for the taking of a ship on the coasts of *Scarborough* in the Sea, and carrying her into the County of *N.* The Defendant although he pleaded that the thing was done on the Sea, was overruled to answer, from whence amongst other things *Sr Edw. Cook* makes a special observation, That when the taking of a thing

thing is partly on the Sea, and partly on the Land, the Common Law shall have the Jurisdiction.

Secondly, That in the time of *Edw.* the 2. It was held, That where one may see what is done on one part of the water, and on the other, it was held no part of the Sea, and that the Coroner shall exercise his office in this case, and of this the Country may have knowledge.

Thirdly, That in the 43 of *Edw.* the third, sixty Acres of Marsh ground over which the Sea did flow and reflow, were adjudged parcel of the Mannor of *Brancaster*, belonging to the Abbot of *Ramsey*, and by consequence were within the body of the County to the low water mark.

Fourthly, That in the 46 of *Edw.* 3. an Action of Trespas being brought in the Kings Court against certain persons of *Hull*, for taking a ship in the Haven of the Town, the Mayor and Bailiffs demanded Conusance by Charter of the King, by which it is granted, that the Citizens and Burgesses of *Hull*, should not be impleaded, *Alibi de transgressionibus infra Burgum, quam infra Burgum*, which

which was allowed, and the Haven lying within the Burrough, by conſequence was within the County.

How far theſe Authorities conduce to the proof of the head propoſed, may be doubted, but as to the ground of the head it ſelf, which is ſo much inſiſted on, That where the Courts of Common Law have Conuſance, the Court of Admiralty can have no Juriſdiction, under favour it is inſufficient, for in the ſame place ſeveral Courts to ſeveral purpoſes may have diſtinct Juriſdictions, Robberies and divers other Offences committed in foreſts, are proſecuted before the ordinary Juſtices, and yet the Juſtice in Eyre concerning vert, veniſon and other things retains his ſpecial Juriſdiction. In *France* as *Sanction* writes, the Lords of manners adjoyning to Navigable Rivers, have ſeveral rights of fiſhing, and other commodities, by the Kings grant or by preſcription, and if they be diſturbed they may have their remedies, in the Ordinary Courts of Juſtice, but as touching the free uſe of the Rivers in reſpect of Navigation, and that which concerns the Publique, the ſpecial Officers called the Maſters of the Waiters,

Juriſdict. of Courts p. 283. lib. 2. de Eaux & Foreſts art. 1. cap. 1.

Waiters,(whose Authority in this Kingdome belongs unto the Admiral) have the charge thereof, and if any Impediments be given, or Annoyances done in those respects, it belongs to their Jurisdiction and power to reform the same.

Touching the particulars, and first of that of the Replevin in the time of *Edw.* 1. concerning a Ship taken in the Sea, and brought into a River, and the defendants being over-ruled to answer, the Reason was, as *Berry* the Chief Justice said, because the King would have the peace kept, as well by Sea, as by Land, Mr. *Selden* in his notes upon *Forteſcue*, recites the case more fully and gives another reason, *viz.* That *William Crake de Holtham* was summoned to answer a complaint of *Robert de Beauſe*, for taking away a Ship of the value of 40. l. on the Sea, near *Scarborough*, to which it was pleaded by the Counsel, that the Plaintiff did count or declare of a thing taken on the Sea, out of any County, So that if the matter were put in issue before the Country, it could not be resolved what Sheriff should summon the Country, and that the Admiral was appointed by the King to hear and determine cap. 32. p. 31.

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sutes of things done on the Sea, &c. Whereunto *Berry* Chief Justice of the Common Pleas answered, we have a general power throughout all *England*, but of the power of the Admirals of which you speak, we know nothing, neither will we assign our power to them, without commandment from the King, touching which you shew nothing; *Haward* said, The place is so near, that if a man had killed one there, he should have been taken, and brought to the Land, and hanged, as well as if the fact had been commited on the Land; *Mettinggam* said more, we tell you that we have power of things done on the Sea, as upon the Land, and therefore we order you to answer; The reason which Mr. *Selden* gives, was because in those times the Common Law had Conusance of things done on the British Sea within the view of the Land, although afterwards it kept its limits, *infra corpus comitatus*, *Leaving the Sea wholly to the Admiral*; So that according to the Verse, sometimes applyed by Sir *Edward Cook*, *Judicis officium est, ut res ita tempora rerum Quærere*, the case adjudged in the time of *Edw.* 1. can be no president for subsequent times, when the

the Admiralty Juriſdiction was better ſettled; and ſo it falls out with Sir *Edw. Cooks* obſervation upon that caſe, *viz.* That when the taking of a thing is partly in the Sea, and partly in a River, within the County, the common Law ſhall have the Juriſdiction, becauſe that in later times, it hath been reſolved otherwiſe, as in the Mayor of *Harwich* his caſe, which was, That the Vice-admiral of *England* having ſeized a Maſt floating on the Sea, cauſed certain Fiſher-men to draw it to ſhore at *Harwich* in *Suffolk*, where the Mayor then claiming Admiralty Juriſdiction, likewiſe ſeized it, for which he being ſued in the Admiralty Court of *England*, moved for a Prohibition; but the Judges were of opinion that it did belong to the Admiral of *England*, and denied a Prohibition, becauſe the ſeizure at Sea, and drawing to ſhore at *Harwich* was one continued act; and therefore the drawing it to ſhore at *Harwich*, gave no right to the Mayor of *Harwich*. The like may be gathered from a Reſolution *in communi banco*, 30 *Eliza. viz.* An Inhabitant of *Plymouth*, being Owner of a ſhip, joyned

in the furnishing and victualling her, and sent her to Sea, in which imployment the Captain of the ship by Piracy took a *French* mans ship laden with salt, and brought her into *Plimouth*, and sold his salt to the Owner; whereupon the *French* men sued the *Plimouth*-man being Owner, in the Admiralty Court, for the Ships goods, and upon suggestion that part of the wrong was done upon the Land, a Prohibition was awarded, but after a long debate, a Consultation was granted, because the first wrong was done upon the Sea.

Secondly, Touching the Coroner exercising his Office (in the time of *Edw.* 2.) in an Arm of the Sea, where one might see what was done on one side, and on the other; whereupon *Standford* concludes that by the Common Law, before the Statute of the 2 *Hen.* 4. (or rather of 15 of *Rich.* 2.) the Admiral had no Jurisdiction, but on the high Sea, which onely Authority, said Sir *Edward Cook*, was sufficient to overrule all Questions. It may be observed what was delivered in the precedent Case concerning those times; and it may be further noted what Mr. *Selden* writes

the power and authority of the Sheriffs in thoſe times, *Sæculis priſcis antequam ſummorum Admirallorum authoritas, &c.* Lib. 2 c. 14 f. 188. *In ancient times before the Authority of the high Admirals of* England *was ſufficiently eſtabliſhed by our Kings, and ſo diſtinguiſhed, that the Government of the Sea did wholy belong unto them, the Sheriffs had ſome Authority in the Sea adjoyning to the County, which did appear in that they did execute the Kings Precepts upon the Sea, and convey the Kings ſhips from one Port to another, through the Seas, which was done about the time of* Hen. *the* 3. *and of* Edw. *the* 1. *but in ſubſequent times, it was never heard of,* poſtquam omnimoda Maris cuſtodia, &c. *after that all manner of guarding the Sea,* &c. *was by our Kings referred to the high Admiral, and to them only and their Deputies, which now belongs unto them by right unqueſtionable.* In which times if the Coroner did exercite his office, where at this time he cannot, for the reaſon aforeſaid, it may be granted, but no good argument can be drawn from thoſe times to the times following, when the Admiralty Juriſdiction was better ſettled.

Thirdly, The authority of the Marſh

grounds, over which the Sea did flow and reflow, adjudged to be within the Mannor of *Brancaſter* in the time of *Edw.* the 3. whence it is concluded to be within the County, is taken up by Sir *Edw. Cook* upon the credit of *Dyer*: But Sergeant *Callis* in his Readings cites the Record in this manner, *Contra Abbot de Ramſey de quodam proceſſu facto, verſus dictum Abbot, ad oſtendendum quare ſexaginta acra Mariſci in manum Domini Regis non debent ſeizari. Et Abbas reſpondet quod ipſa tenet Manerium de Brancaſter quod ſituatum eſt iuxta Mare, & quod eſt ibidem Mariſcus qui aliquando per Fluxum Maris minoratur, aliquando per Fluxum Mardo augetur, &c.* By which it is apparent, that thoſe grounds were claimed by that King, as waſte and floted grounds, and no parcel of the Mannor, which the Abbot did juſtifie, and howſoever they might be part of the County, yet they could not be places concerning which there might grow any queſtion of Juriſdiction, for although they were ſubject to flowing and reflowing of the Sea yet they were not either fit for the ſayling, nor arriving of Ships; and admitting that ſome thing may be inferre

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from thence to prove that places where the Sea floweth may be within the bodies of Counties, yet it doth not wholy exclude the Admiral from having Jurisdion, by Sir *Edw. Cooks* learning, in Sir *Henry Constables* Case, where he sheweth, That it hath been resolved by the whole Court, that the soyl over which the Sea doth flow and reflow, *inter le High-water mark, and the Low-water mark*, the Land may be parcel of a Mannor of a subject, and yet it was resolved, That when the Sea did flow *ad plenitudinem*, the Admiral should have Juristdiction of any thing done upon the water, betwixt the High-water mark, & the Low-water mark, by the ordinary and natural course of the Sea, and when the Sea doth reflow the Land may appertain to a subject, and then any thing done upon the Land shall be tried at the Common Law, for it is then parcel of the County, whereupon he makes an observation, That beyond the Low-water mark the Admiral alwayes hath Jurisdiction, and betwixt the High-water mark, and the Low-water mark, the Common Law, and the Admiralty have *divisum imperium* interchangeably,

and why the ſame ſhould not hold as well in Arms of the Sea, as in the open Sea, may deſerve ſome conſideration.

Fourthly, The allowance of the Common Law of the Haven of *Hull* to be within the *Burrough*, in reſpect of an Action of Treſpaſs determinable at the Common Law, for the reaſons before ſhewed in general, it doth not hinder but that in the ſame place if damage be done by one ſhip to another, remedy may be given according to the Judgements in the Roll of *Oleron*, and ſo in reſpect of the place, though not of the cauſe, the Common Law, and the Admiralty may have *conjunctum imperium* occaſionally.

Secondly, There remain thoſe Authorities which ſhew that the Courts of Common Law have puniſhed, and reſtrained ſuch as have ſued in the Admiralty for things done in Havens, and Navigable Rivers, as by actions of double Damages, Præmuniries, and Prohibitions

Touching the firſt it is related, That *6 Hen. 6. John Burton* in the Common Pleas recovered againſt *Bartholomew Putt*, for double

double damages 1400 l. for that the ſaid *Putt* had ſued *Burton* in the Admiralty for entring and taking away three ſhips with Merchandiſes and Priſoners, with force of Arms, *Super Altum mare*, whereas the taking thereof was in the Haven of *Briſtol*, *infra corpus Comitatus*.

Again, That the like Action 12 of *Henry* 6. was brought by *Robert Cupper*, againſt *John Reyner*, who had ſued him in the Admiralty Court for entring his ſhip in the Haven of *Yarmouth*, *infra Corpus Comitatus Norf.*

Secondly, Concerning Præmunires, it is ſaid, That 38 of *Hen.* 6. one was brought by *John Caſſy*, againſt *Richard Beauchamp*, and *Thomas Paunce*, for that they ſued him in the Admiralty Court for taking away certain *Jewels ſuper Altum mare*, whereas he took them *apud Stratford-Bow infra corpus Comitatus Middleſexiæ.*

Again, That in the 9 of *Hen.* 7. a Præmunire was brought for a Sute in the Admiralty Court for taking and carrying away, *Quandam naviculam apud Horton Key, at South Lynn*, ſuppoſing the ſame to have been done *ſuper altum mare.*

It cannot be denied but that theſe Authorities eſpecially contain *forcible Arguments*, and fit to fright men from ſuing in the Admiralty Court, but how *reaſonable*, it may be conſidered.

Touching the Action of double Damages, in the leading Caſe of *Burton* againſt *Put*, the point of Iſſue was (as it may be ſuppoſed) whether the thing done in the River of *Briſtol*, were done within the body of the County, and eight Terms (as Sir *Edw. Cook* relates) were ſpent in deliberation of the Caſe, which argues that the Judges could not eaſily agree upon the ſame, and happily the reaſon was, becauſe the Statute of *Henry* 4. for double Damages, relates onely to that of the 13 of *Richard* the 2. *chap.* 5. and the Action was layed upon that of the 15 *Richard* the 2. *chap.* 3. Touching things done within the Bodies of Counties, it being not proper to extend a penal Law from one Statute to another; and how rightly it was ſo adjudged, may be better conſidered; and it may be thought upon, why that being a leading Caſe, and having received ſo long deliberation, the Reaſons of the Reſolutions of the Judges

Judges are no way publiſhed.

It may be farther noted as to our purpoſe, that the taking of Ships in the Haven of *Briſtol* was done with force of Arms, which made it more than an ordinary buſineſs, of which the Admiral claimeth the Conuſance in ſuch places, but was of the condition of thoſe matters which belong unto him onely upon the Sea; the other Caſes of double Damages, for ought appears to the contrary, might be for matters of Treſpaſs, committed likewiſe by Force and Arms.

Touching Præmunires brought for ſuing in the Admiralty Court, Sir *Edw. Cook* ſaith, That they being brought upon the Statute of the 16 of King *Rich.* 2. for ſuing in *Curia Romana aut alibi*, are ſo evident, and of ſo dangerous a conſequence, as no application ſhall be made thereof. And for the dangerous conſequence it is moſt true, for that the penalty intended in that Statute extends to the impriſonment of the perſon during pleaſure, and the loſs of all his goods, and of the profits of his Lands during life; and for the application which he forbears, it may be conceived that his meaning

meaning was that the Admiral, or his Judge might be made liable thereunto; but for the Evidence that by *Curia Romana aut alibi*, the Court of Admiralty ſhould be underſtood, under his favour it is not ſo clear; nor if the Statute be well conſidered, can it with any reaſon be maintained; the word *Alibi*, or elſewhere in that Statute was in truth intended of *Avignion* in *France*, or ſome other place, to which the Pope and his Court in thoſe times did uſually remove; and that Statute being intended to exclude the forein authority of the Pope, it might be thought neceſſary to debar the people of this Kingdome from having intercourſe to the Popes Conſiſtory, whether at *Rome* or any where elſe; and when the Popes authority and his Laws were in force in this Kingdome, and no way depending upon the Crown, the word *Alibi*, or elſewhere, was held to extend to Biſhops Courts, if they medled with temporal cauſes belonging to the Kings Courts, eſpecially if they took upon them to reverſe, or diſparage Judgements given in the Courts of Common Law; but how the word *Alibi* ſhould be applied to the Kings Court

Court of Admiralty, never relating to any Forein power, and proceeding onely by those Laws which are allowed by the King to be in force in that Court, it is a mystery beyond any ordinary imagination. It may be further noted, that although it be said that the two Præmunires were brought upon such occasions, yet it doth not appear that any Judgement was given upon either of them.

Lastly, For confirmation and conclusion of this Point, it may be added, that before the King and his Councel it was likewise agreed unto by all the Judges, *That the Admiral may inquire of, and redress all Annoyances and obstructions in Navigable Rivers beneath the first Bridges, that are any impediment to Navigation and passage to and from the Sea; and also try all personal Contracts and injuries done there which concern Navigation upon the Sea, and that no Prohibition is to be granted in such Cases.*

That

Aſſert 7 ***That the Admiral of*** **England** ***may hold Plea of Contracts, and other things done beyond the Sea, relating to Navigation and Trade by Sea.***

TO maintain that the Court of Admiralty may hold Plea of Con-
2.b.p.3. & p.157. tracts, and other things done beyond the Sea; It is alleged, Firſt, That by an Ordinance made by King *Edward* the firſt, and his Lords, at *Haſtings*, which is extant in the antient Book of Admiralty, it was ordained that *Charum Contract, &c. That every Contract made between Merchant and Merchant, or betwixt Merchant and Mariner beyond the Sea, or within the flood-mark, ſhall be tried before the Admiral, and no wayes elſewhere.*

Secondly, It may be taken into conſideration, That ſuch buſineſſes amongſt Merchants and Seamen, are to be determined according the *Civil Law, and equity thereof*, as alſo according to the cuſtomes and uſages of the Sea; Mr. *Selden* in his Notes upon *Forteſcue*, obſerves

serves out of *Bartolus*, *Quod in Curia mercatorum debet judicari ex æquo & bono, omissis juris solennitatibus*, which the Admiralty Judges may, and do observe, but the Courts of Common Law hold they must do otherwise. *Malines* relates P.1.c.13. an instance of a Merchant-stranger, who having sold Commodities to three several Merchants of *London*, took one Bond of them all for the payment of 300 l. and one of them breaking, and being imprisoned, he was contented to compound with him for the fifth part of his Debt, or for 20 l. in lieu of a 100 l. conceiving him as a third party to be liable for no more; and having received that summ, gave him a release, and afterwards the two other parties neglecting to pay him their parts he was advised to sue them at the Common Law, where he was given to understand, That if a man release one of his debtors, who is bound with others, by way of acquittance, they are all released and acquitted thereby, which was contrary to the rule of Equity, and that simplicity and just dealing which is expected amongst Merchants, which do not admit that a mans action should operate be-

beyond his intention, and that a favour yeelded to one in necessity, should not extend further to his prejudice, in respect of those which were in better condition.

Thirdly, to the like purpose, it is observed, that in Contracts and Bargains, betwixt such persons, those solemnities are not required which are necessary in Deeds at the Common Law, as of signing, sealing and delivering, to make their Bills and Obligations of force, and the bearers of such Bills according to the course of Merchants, shall be admitted to demand, and recover without Letters of Attorney.

Fourthly, It is considerable, that Instruments made beyond the Sea, have usually Clauses relating to the Civil Law, and to the Law of the Sea. *Malines* *P.1.c.13.* shews, That when two or three take up money at interest, and all binde themselves as Principals, generally according to the Civil Law and custome of Merchants, every person is bound, but for his own part, and therefore, where it is intended, that for the better security, every man should be *bound in solidum*, in the instrument of the Contract, there-

ther is a declaration and renunciation made *of all privileges, and eſpecially of thoſe which are called, Exceptio diviſionis, & ordinis excuſſiones, and beneficii Epiſtolæ divi Adriani.* In *Weſts* Preſidents concerning Merchants affairs, there are the like forms, as where a man *obligat ſe hæredes & Executores ſuos, omnia bona mobilia & immobilia, præſentia & futura, tam ultra quam citra mare, ubicunq; exiſtentia, renuncians omnibus & ſingulis exceptionibus, &c.* and amongſt the reſt he declares the form of a gneral procuration to ſue for Debts in a Forein Country, wherein it is ſpecified that power is given *ad Libelles, Petitiones, &c. articulos dandum, datiſque reſpondendum, ad Lites conteſtandum, & de calumnia vitanda juramentum, in animam conſtituentium præſtandum*; all which are as ſtrange to the Law of this Land, as the places from whence they proceed.

Fifthly, For that, as *Forteſcue* affirms, Contracts and Bargains made amongſt ſtrangers in another Realm, muſt be proved (otherwayes than in the Courts of Common Law) by witneſſes, which, ſaith he, cometh to paſs, becauſe in thoſe parts there be no neighbours, by whoſe

whose oaths Juries of twelve men may be made, as in Contracts and other cases arising within the Realm, is accustomed to be done.

To avoid the Admirals Jurisdiction in holding Pleas of Contracts, or things done beyond the Sea, Sir *Ed. Cook* affirms, that Bargains and Contracts so made, wherein the Courts of Common Law cannot administer Justice, did belong to the Constable and Marshal, for the Jurisdiction of the Admiral is wholy confined to the Sea, which is out of any County; whence it may be gathered, that as to this point he intends for Authorities the Statutes of the 13 of *Richard* 2. which sets forth the Jurisdiction both of the Constables and Marshals Court, as also of the Court of the Admiralty.

That concerning the Constable and Marshal, is as far from the purpose, as it was from Sir *Edward Cooks* thought to give any addition of power to that Court. The Act declares, *That to the Constable and Marshal it belongs to have Conusance of Contracts, and Deeds of Arms out of the Realm*, whence it is inferred, that therefore out of the Realm, the Ad-

Admiral shall have no Conusance of Contracts, or matters concerning Navigation, and Trade; It may be better argued from that Act, That as the Parliament allowed to the Constable and Marshal, Jurisdiction in Causes of Arms, and Warr, arising both within and without the Realm, which cannot be determined by the Common Law, so it did intend Causes of Navigation and Trade arising either within or beyond the Seas, to be tried by the Admiral, The nature and the Quality of the business, more Conducing to the point of Jurisdiction, than the Circumstances of the place where it happens; The Statute which allows the Admiral to medle with things done upon the Sea, by Sir *Edward Cooks* leave, doth not confine his Jurisdiction to the Sea, in respect of any place beyond the Sea, It is rather pretended to debarr him from medling with things done within the Realm, which notwithstanding, it being formerly shewed, that the Admiral may hold plea of Maritime Causes arising from Contracts made within the Land, it may be less needfull to labour to prove that it doth not hinder him from taking

Comusance of Sutes concerning Navigation and Trade, arising from Contracts made and businesses done beyond the Sea.

The other Authorities which may be collected, to prove how the Admiral hath no Jurisdiction of things done beyond the Sea, are a writ in the Register, and *Fitz Herbert*, and a number of Prohibitions.

That of the Register is, If goods be taken from an English-man in *Spain* or beyond the Sea, and the party cannot obtain Justice there, he shall have a writ of the Sheriff to arest the Bodies of the offenders, and to seize their goods to the value, which proveth, saith Sir *Edward Cook*; that the Admiralty cannot hold plea thereof, for that the party hath remedy at the Common Law; That Argument is as good, as if he had said There lies a writ of Withernam at the Common Law, therefore no Letters of Repriſalls can be granted in the Admiralty. It ſtands with great reaſon, that if a Subject be ſpoiled of his goods, in another Realm, and can have no remedy there, that the party, or the goods belonging to him, being found within the Ju-

riſdiction

iſdiction of the Common Law, they hould be made lyable to ſatisfaction; And why ſhould it be thought unreaoable, that upon the like occaſion, if the arty, or his goods be found within the uriſdiction of the Admiralty, the Subct ſhould have remedy there? But this uthority concerns not Contract, or barains made beyond the Sea.

Beſides, how far this writ agrees with e Common Law, it may be conſideed, in regard, Mr. *Selden* writes, in *Triinalibus noſtri Juris Municipalis, &c.* in ur Courts of Common Law, the Juſdiction hath been ever held to be ſuch, at according to the ſtrict Laws antitly practis'd, an Action could not be ought upon a buſineſs, hapning elſehere, than within the Kingdome, as for any Ages ſince it hath been held, that e Action ought to be rejected, unleſs e ground of it be ariſing from ſomeing done within the Body of a Coun: And Sir *Edward Cook* recites divers thorities, by which the ſame is mainn'd as agreeable to the Common Law. t this Law, he allows, where the ngs were totally done out of the alm, and Implies, that it is otherwiſe,

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Realm, and the performance ought to b
in another, for then (saves he) as to th
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transmarinis, whereby payment or pe
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and performance, and no doubt for th
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Common Law, so that the Rule is fr
med to the building, and not the buildi
to the Rule.

The last Argument is, that divers Pr
hibitions have been granted upon sut
brought in the Admiralty, for thin
done in *partibus exteris & transmarin*
and the first is as ancient as the 36.
Hen. 8. But upon what Contracts, bu
nesses, or occasions those sutes w
groundе

grounded, and Commenced, it is not pecified; and to conclude this point as he former, First, the third request of he Judge of the Admiralty in the year 575. (*viz.*) That the Judge of the Admiralty according to such ancient order made by King *Edw.* 1. and his Councel, and according to the Letters patents of he Lord Admiral for the time being, nd allowed of other Kings of this Land ever since, and by Custom time out of memory of man, may have Cognition of ll contracts and other things arising as well beyond, as upon the Sea, without et or prohibition, *The answer is, that it s agreed upon by the Lord Chief Justice and is Collegues.*

Secondly, All the Judges before the King and his Councel *Octavo Caroli* a- reed, That if Sutes shall be commenced n the Court of Admiraly for Contracts ade, or other things done beyond the ea, or upon the Sea, no Prohibition is be awarded.

Concerning the Concessions of the udges of the Kings Bench, and the Re- olutions of all the Judges alleged for he Confirmation of the precedent Af- rtions, it may be noted, That touching

the former, by them are intended certain Anſwers of the Chief Juſtice and other Judges of that Bench, to the Requeſts of the Judge of the Admiralty in the year 1575. of which mention is made in the complaint of the Admiral, 7. Object. wherein it is ſet forth, That the Agreement made in *anno Domini* 1575. between the Judges of the Kings Bench, and the Court of Admiralty, for the more quiet and certain Execution of Admiral Juriſdiction, was not obſerved, to which Sir *Edward Cook* anſwers, that that ſuppoſed agreement, had not been delivered unto them, but having heard the ſame read before his Majeſty (out of a Paper not ſubſcribed with the hand of any Judge) tney anſwer, that for ſo much thereof as differs from their preſent Anſwers; it was againſt the Laws and Statutes of the Realm, and therefore the Judges of the Kings Bench never aſſented thereunto, as it is pretended, neither doth the phraſe thereof agree with the Terms of the Laws of the Realm.

It is not probable that Dr. *Dunn* then Judge of the Admiralty would have produced ſuch an Agreement to the Judges before the King, but that he had ſome

ſome ground for the ſame, which being ſuppoſed, it may as well inferr that thoſe Conceſſions were agreeable to the Laws and Statutes of the Realm, becauſe thoſe Judges did aſſent unto them, as that they did not aſſent becauſe they were not agreeable to the ſame; And it may as well be doubted, whether thoſe things wherein thoſe Anſwers at that time did differ from the Reſolutions of all the Judges in the 8. of King *Charls*, were agreeable to the Laws and Statutes of the Realm, as it is confidently affirm'd, that wherein thoſe Conceſſions did differ from thoſe Anſwers were againſt the ſame, wherein the phraſe of the Requeſts and Anſwers is not agreeable to the terms of the Common Law is not ſo much conſiderable, as how the matters therein contained may conſiſt, both with Law and Equity, and to that end it may not be amiſs to recite them, as they are extant in ſeveral Manuſcripts in which are collected things of thoſe times remarkable, both concerning the Eccleſiaſtical Courts, and the Court of Admiralty, as followeth. 8 *Carol.*

12. *Of May* 1575.

Sir Christopher Wray, L. chief Justice, Dr. Davy Lewis, Judge of the Admiralty.

The Requests of the Judge of the Admiralty to the Lord chief Justice of her Majesties Bench, and his Collegues, with their Answers to the same.

1 Request.

That after Judgement or Sentence given in the Court of Admiralty, in any cause, or Appeal made from the same, to the high Court of Chancery, it may please them to forbear the granting of any Writ of Prohibition, either to the Judge of the said Court, or to her Majesties Delegates, at the sute of him by whom such Appeal shall be made, seeing by choice of Remedy in that way, in reason he ought to be contented therewith, and not to be relieved any other way.

Answer.

It is agreed by the Lord chief Justice, and his Collegues, that after Sentence given in the Delegates, no Prohibition shall be granted. And if there be no Sentence, if a Prohibition be not sued for within the next term following Sentence in the Admiralty Court, or within two terms after at the farthest, no Prohibition shall pass to the Delegates.

That

That Prohibitions hereafter be not granted upon bare Suggestions or Surmises, without summary Examination and Proof made thereof, wherein it may be lawfull to the Judge of the Admiralty, and the party defendant, to have Counsel, and to plead for the stay thereof, if there shall appear cause. 2 *Request.*

They have agreed that the Judge of the Admiralty, and the party defendant shall have Counsel in Court, and to plead to stay, if there may appear evident cause. *Answer.*

That the Judge of the Admiralty according to such an antient Order, as hath been taken by King *Edward* the first, and his Councel, and according to the Letters Patents of the Lord Admiral for the time being, and allowed by other Kings of the Land ever since, and by custom time out of Memory of man, may have and enjoy cognition of all Contracts, and other things, rising as well beyond, as upon the Sea, without let or Prohibition. 3 *Request.*

This is agreed upon by the said Lord Chief Justice, and his Collegues. *Answer.*

That the said Judges may have and enjoy the knowledge of the breach of 4 *Request.*

Charter-

Charter-parties, made betwixt Maſters of Ships and Merchants for Voyages to be made to the parts beyond the Sea, and to be performed upon, and beyond the Sea, according as it hath been accuſtomed time out of mind, and according to the good meaning of the Statute of 32. of *Henry* 8. *chap.* 14. though the ſame Charter-parties be made within the Realm.

Anſwer. This is likewiſe agreed upon, for things to be performed, either upon, or beyond the Sea, though the Charter-party be made upon the Land, by the Statute of 32. *Hen.* 8. *cap.* 14.

5 *Requeſt.* That Writs of *Corpus cum Cauſa*, be not directed to the ſaid Judge, in cauſes of the nature afore-ſaid, and if any happen to be directed, that it may pleaſe them to accept of the Return thereof, with the Cauſe and not the Body, as it hath alwayes been accuſtomed.

Anſwer. If any Writ of this nature be directed in the cauſes before ſpecified, they are content to return the Bodies again to the Lord Admirals Gaol upon Certificate of the cauſe to be ſuch, or if it be for contempt or diſobedience to the Court in any ſuch cauſe.

Touch-

Touching the Reſolutions of all the Judges, 8. *Caroli*, it may be conſidered, That in the preſence of the Kings Majeſty, and twenty three Lords, and others of his Majeſties Councel, they were ſubſcribed unto by all the Judges, (viz.) *Thomas Richardſon*, *Robert Heath*, *Humphrey Dawenport*, *John Denham*, *Richard Hutton*, *William Jones*, *George Crook*, *Thomas Trevor*, *James Weſton*, *Robert Barkley*, *Francis Crawly*, and alſo by *Henry Martin* Judge of the Admiralty, and *William Noy* the Attorney general, and the Tranſcript thereof was ordered to be Entred in the Regiſter of the Councel cauſes, and the original to remain in the Councel cheſt, 18. *Feb.* 1632.

Sir *Edward Cook* concerning the anſwers and reſolutions of the Judges, to thoſe things which he calls *Articuli Cleri*, 3 *Jacob* ſaith, That although they were not enacted by the authority of Parliament, as the Statute of *Articuli Cleri*, in the 9. of *Edward* 2. was, yet being reſolved unanimouſly, by all the Judges of *England*, and the Barons of the Exchequer, they are for matters of Law, of higheſt authority, next unto the Court of Parliament; And it may be thought that

that these resolutions of all the Judges touching the Jurisdiction of the Admiralty, ought to be of no lower esteem, the rather for that the unanimity of all the Judges to the former, must be taken upon the credit alone of Sir *Edward Cook*, but as to the latter, the Evidence thereof doth appear by the joynt subscriptions of all before named, which is likewise attested by Sir *George Crook*, who was one of them, who in his reports of Hillary term 8 *Caroli*, under the title of Resolutions upon causes of Admiral Jurisdiction, writes that it was agreed, as followeth.

First, if sute should be commenced in the Court of Admiralty, for Contracts or other things personally done beyond the Sea, no Prohibition is to be awarded.

Secondly, if sute be before the Admiral for freight, or Mariners wages, or for breach of Charter-parties, for Voyages to be made beyond the Seas, though the Charter-party happen to be made within the Realm, so as the Penalty be not demanded, a Prohibition is not to be granted; But if the sute be for penalty, or if question be made, whether the Charter-

Charter-party be made or no, or whether the Plaintiff did release, or otherwise discharge the same within the Realm, this is to be tried in the Kings Courts, and not in the Admiralty.

Thirdly, if sute be in the Admiralty, for building, amending, saving, or necessary Victualling of a Ship, against the Ship it self, and not against any party by name, but such as for his interest makes himself a party, no Prohibition is to be granted, though this be done within the Realm.

Fourthly, although of some causes arising upon the Thames beneath the Bridge, and divers other Rivers beneath the first Bridge, the Kings Courts have conusance, yet the Admiral also hath Jurisdiction there, in the point especially mentioned in the Statute of 15. of *Richard* 2. and also by Exposition, and Equity thereof, he may enquire of, and redress all Annoyances, and Obstructions, that are or may be any Impediment to Navigation, and passage to or from the Sea, and also to try personal Contracts, and Injuries done there which concern Navigation on the Sea, and no Prohibition is to be granted in such cases.

Fifthly,

Fifthly, if any be imprisoned and upon *habeas Corpus* brought, it be certified, that any of these be the cause of his Imprisonment, the party shall be remaunded.

Subscribed the 4. *Feb.* 1632. by all the Judges of both Benches.

Sir *George Crooks* Reports being published by Sir *Harbotle Grimston*, are approved and allowed as for the Common benefit, by the Judges then being, (viz.) by *John Glynn*, *Oliver St. John*, *Edward Atkins*, *Robert Nicholas*, *Matthew Hales*, *Hugh Windham*, *Peter Warburton*, and *John Parker*.

It may be presumed, that what so many persons Eminent both for their place, and also for their knowledge of the Laws, and Statutes of the Realm, did so deliberately, and cautiously resolve upon, and others of like quality have countenanced, ought to be received, and respected as sufficient Authorities, as to those points whereof they did declare their Resolutions, notwithstanding the confident opinions of any others, either private, or singular persons, to the contrary: And that the Kings Majesty and his Councels approbation being added there-

thereunto, should be of force enough to settle all doubts and differences concerning the same, the rather, for that anciently (as before is shewed) the Kings of *England*, with their Councel only, have made Constitutions concerning the Admiralty, and that in point of Jurisdiction, and it is apparent by the ancient Record, cited both by Mr. *Selden*, and Sir *Edward Cook*, That the most famous Prince, King *Edward* the 3. (in whose time the Admiralty received its chief establishment) in the 12. year of his Reign, did consult and advise with his Councel, and his Judges concerning the same; And it may seem strange, that whereas by the Statute of the 13. of *Richard* the 2. (whose Acts are insisted upon as the greatest obstructions to the Admirals Jurisdiction) the Kings Councel alone are enabled to decide, what belongs to the Constables and Marshals Jurisdiction, the King himself with his Councel, and Judges, should not have as much power to determine, what belongs to the Jurisdictions of his Admiral. *Stat. 1. c. 2.*

That

Assert. 8 ***That the Courts, and Judges of the Common Law, do intermeddle, and interrupt the Courts of Admiralty in causes properly belonging to the same.***

Hitherto it hath been Endeavour'd to be made appear, That the proceedings in the Courts of Admiralty, in the chief points in difference with the Courts of Common Law, may consist with the Laws and Statutes of the Realm; It may now be taken into Consideration, how far the proceedings of the Courts and Judges of the Common Law, in intermedling with causes properly belonging to the Admiralty, and in obstructing the proceedings of that Court, may be justified; By the former, is intended their drawing of such causes by actions of Trover, and of Trespas, to their Conusance, by the later their disparaging of Stipulations, and prescribing the forms of libells in such causes.

The former may the rather be insisted upon, in regard Sir *Edward Cook* doth so often,

often, and so earnestly in general inveigh against the encroaching of the Court of Admiralty upon the businesses belonging to the Courts of Common Law, and in particular where he chargeth, That in the blessed time of peace, those who belong to that Court, wanting businesses proper to that Jurisdiction, do encroach upon matters belonging to the Kings Courts, lest they should sit idle, and have nothing to do; the like practice of encroaching being far more unexcusable in those, who belong to the Kings Courts, which do alwayes abound with businesses sufficient for the same.

Concerning the Actions of *Trover*. Amongst the grievances complained of by the Admiral, 8 *Jacob*. It is presented in the first place, That whereas the Conusance of all Contracts, and other things done on the Sea, belongeth to the Admirals Jurisdiction, the same are made triable at the Common Law, by supposing the same to have been done in *Cheap-side*, or such places: And under favour, the answer thereunto is neither clear, nor direct, nor to the purpose; For the ground of that answer being laid, That the Admiral hath no Conusance of

any thing done within any County, it is ſaid, That it is not material whether the place be upon the Water, *Infra fluxum Aquæ*; but whether it be upon any water within the County; wherefore it is acknowledged, That of things done upon the Sea, out of any County, the Admiral ought to have Juriſdiction, and that no preſidents can be ſhewed that any Prohibition hath been granted for any Contract, Plea, or Quarrel, for any Maritime cauſe done upon the Sea. In this Anſwer it is confeſt, That the Admiral ought to have Juriſdiction of things done on the Sea, and that no Prohibitions have been granted for any ſuch cauſes; but whether by the ſuppoſal or fiction of a ſhips arriving in *Cheap-ſide*, the Courts of Common Law do hold Plea of things done on the Sea, it is nether confeſſed, nor denied, much leſs is there any reaſon given for the ſame. Where it is ſaid, It is not material whether the place be upon the water, *infra fluxum & refluxum Aquæ*, but whether it be upon any water within the County, That may be true, in reſpect that it is ſuppoſed that all things done in the County belongs to the Conuſance of the Com-

mon

mon Law; but when the place where a thing is done belongs apparently to anothe Juriſdiction which pretends as well to the right of the place, as to the right of the cauſe, the place of the action can in no wayes be ſuppreſſed, and another ſuggeſted in the room thereof; for if that be permitted, the one Juriſdiction being the greater, a more potent may ſoon ſwallow up the other, not onely to the prejudice of the ſubjects for whoſe good the diverſity of Courts were erected, but alſo the wrong of the Prince from whom thoſe Juriſdictions are derived.

Sir *Thomas Rydlye* in his view of the Civil Laws, further ſhews how injurious to the Admiralty, and unreaſonable this practice is, in regard that in Law no Fiction ought to be admitted, but ſuch as is both poſſible, and equitable; Firſt, That it ought to be Poſſible, becauſe otherwiſe it were to admit that by way of ſuppoſition, which nature will not alow; and therefore although one that is dead, to ſome conſtructions of Law, may be feigned to be alive, if at that time any of his equals in age be ſtill living, yet one who dyed two hundred

years since, cannot to any purpose be supposed to be living, all of the same age being long before dead. Secondly, The Fiction ought to be Equitable, because if there be no reason for it, it is altogether unnecessary and useless; and therefore although the Law may admit a Fiction or supposition, that a childe in the mothers womb, is already born, for its benefit, in regard that otherwise it might be deprived of its filial portion, or some other right in equity belonging to it; yet where there is no such reason or equity, it ought not to be admitted, as vain and ridiculous; but for the fiction of a ship to arrive in *Wardo de cheap*, where there is no water to bear or carry, is of a thing utterly impossible; and it is wholy void of equity, because a Trial of any business thereupon cannot obtain any just and fair remedy thereby at the Common Law, which might not have been had in the Court of Admiralty, which is a more competent and proper Court, for the trial of such things, than any Court of the Common Law.

Secondly, Concerning Actions of Trespas, the Admiral in his ordinary capacity claiming no Jurisdiction of of-

fences

fences against the Crown, but onely on the Sea, and of wrongs and injuries done in other places without force or violence, to make such causes triable in the Kings Courts, it is suggested, that they were done *vi & armis*, which is the usual form of Endictments of Trespasses in the Kings Bench (as of cutting of a purse) although in truth there were no fear, nor violence used in committing the same.

Touching the interrupting and obstructing the proceedings in the Court of Admiralty in causes properly belonging to the same, concerning Stipulations and Libels, although it may be presumed, that what Sir *Edward Cook* affirms, *That where the principal matter is acknowledged to be of Ecclesiastical Cognisance, the Temporal Judges ought not to call in question the form of proceedings, though they be against the reason of the Common Law*, because *Cuilibet in sua arte merito credendum*, that the same should be allowed in the Admiral Court.

Cook 4 Reports, p. 29. 3 H. 5. 14 b. 11. H. 7. 9.

Yet in the third Objection of the Complaint 8 *Jacob*, it is shewed, That whereas time out of minde the Admiral Court hath used to take Stipulations for ap-

Pearance and performance of the Acts and Judgements of the same Court; It is now affirmed by the Iudges of the Common Law, that the Amiralty Court is no Court of Record, and therefore not able to take such Stipulations, and hereupon Prohibitions are granted to the utter overthrow of that Court. The answer whereunto is, That the Admiralty proceeding by the Civil Law is no Court of Record, and therefore cannot take any such Reeognizances as a Court of Record may do, and for taking of Recognizances against the Law of the Realm, we finde that Prohibitions have been granted, as by the Law they ought: And if an erronious sentence be given in that Court, no Writ of Errour, but an appeal to certain Delegates doth lye, as it is apparent by the Statute of the 8 *Eliz. Reginæ Cap.* 5. which proveth that it is no Court of Record. Whereunto it may be replied:

8.b p 28. & p. 15. That some things done by, or before the Admiral, are matters of Record, may be maintained from an ancient Ordinance of King *Richard* the first, with advice of the Lords, at *Grimsby*, viz. *That when the King writes by his Letters Patents*

to

to the Admiral to arrest Ships more or less for his service, and that the Admiral should write to his Lieutenant to see things put in execution accordingly, forasmuch as the Admiral and his Lieutenants are of Record, After the Admiral shall have written to the King, or to the Chancellour of England *the names of the Ships arrested, together with the names of the Owners and Masters of them, in that case neither the Owner of the Ship, nor the Master, shall be admitted to say that the Ship is not arrested*; but admitting that the Court of Admiralty is not a Court of Record in ordinary matters, no more are the Stipulations taken there, such Recognizances as are required to be taken in Courts of Record by the Common Law, those Stipulations causing no privileged obligations before other bonds, nor extending to any part of mens Lands, which is otherwise in Recognizances taken in Courts of Records by the Common Law; And it may seem strange that Sir *Edward Cook* acknowledging and allowing the proceedings of that Court to be according to the Civil Laws, taking of Stipulations or bayls for the parties appearance, and the performances of Decrees and Sentences in that Court, pre-

ſcribed by the Civil Law, *Ne judicia ſint eluſoria*, and unverſally practiſed, where judicial proceedings are according to that Law, as likewiſe in this Kingdome in the Conſtable and Marſhals Court, and in the Courts of the Univerſities proceeding by the Civil Law, the ſame ſhould not be allowed in the Admiralty Court.

And the complaint in this point may ſeem the more conſiderable, in regard that, to the publique Notaries about the Exchange, with out Exception or Controll it hath been allowed, That Merchants appearing before them, (in a manner nearer to the Recognizances of the Common Law) do acknowledge bonds, and bind, *Se & Executores, & bona tam immobilia quam mobilia præſentia in futura*, And ſometimes themſelves being abſent, the ſame things are done in their names by their ſervants, or factors, Exhibiting Procurations from them to that purpoſe: And it may be noted, that amongſt Sir *Edw. Cooks* Authorities there cannot be diſcerned any Statute, Judgement, or Book-caſe, to make good the Anſwer to that Objection, in the Complaint.

Se-

Secondly, concerning Libells in the Court of Admiralty, The Lord *Hobard* in *Audly* and *Jennings* case affirms, that if a Contract in truth were made at Sea, and in the Admirals Court it be laid generally, without saying *super alto mari*, a Prohibition might lye, for the Libel must warrant the sute in it self; But Justice *Reeves* in his Argument, *Pasche* 22. *Caroli*, differs from him in opinion, and distinguishes betwixt a particular Jurisdiction, created in diminution of the general Courts of Common Law, and a particular Jurisdiction over things that never did belong to the Courts of Common Law, but which is wholly distinct from the same: In the first case he confesseth that it is necessary to allege the cause of Action to arise within the new created Jurisdiction, because *prima facie*, nay *de Jure*, the Courts of Common Law have general Jurisdiction of those things, but in the later case, as of the Admiralty, if the cause be Maritime, there is no need to averr it to have been done upon the Sea, out of any respect to the Courts of Common Law, for that it doth not tend to the diminution of any of those Courts, and for Confirmation there-

thereof he affirms, that the Jurisdiction of the Marshalsey, stands partly upon the Statute *Articuli super Chartas*, and the words of that Statute are as restrictive, as any words of the Statutes touching the Admiralty, and by the books of the Common Laws, the Marshal cannot hold Plea in some cases unless both parties be of the Kings Houshold, nor in any case unless one of the parties be so, yet it is resolved, that the Declaration is good, although it be not averred therein, that any of the parties be of the houshold, and therefore a *Fortiori* it is not necessary in the Admiralty to specifie in the Libel the thing to have been done, *super alto mari*, the Admiralty Jurisdiction being more distinct from the Common Law, than that of the Court of Marshalsey.

That the trial of Cauſes concerning Navigation and Trade in the Court of Admiralty, is more commodious for the Subjects, and Kingdome of England, than in the Courts of Common Law.

Aſſert. 9

HOw much the maintenance, and advancement of Navigation, and trade by Sea, concerns the Kingdome, and Subjects thereof, Sir *Edward Cook* delivers, who ſaith, *That Trade and Traſique is the lively-hood of a Merchant, and the life of the Common-wealth, wherein the Kingdome, and every Subject hath intereſt; For the Merchant is the good Bailiff of the Realm, to Export, and Vent the Native Commodities, and to Import and bring in the neceſſary Commodities, for the defence and benefit of the Realm.* So much is confirmed by ſeveral Acts of Parliament, fram'd by common conſent of the Kingdome. The Statute of the 32. of *Henry* the 8. *chap.* 24. ſets forth, *That it is notoriouſly known that the Realm of England,*

Comment upon Magna Chart. Fol. 28.

for

for the most part is invironed with the Seas, so that the Subjects cannot convey, and transport their Wares, Merchandizes, and Commodities by Land, but only by Ships, and that the Navy, and multitude of Ships of the Realm, is very commodious, and necessary, as well for the intercourse, and concourse of Merchants, conveying, and transporting their Wares, and Merchandizes, and a great defence and security to this Realm, as well to offend and defend, as also for the maintenance of many Masters, Mariners and Seamen, and also hath been the chief maintenance and supportation of Cities, Towns, Havens, and Creeks near adjoyning unto the Sea-coasts: Likewise that of the 43. of *Elizabeth*, *chap.* 12. declares, *That it hath alwayes been the Policy of this Realm, by all good means to comfort and encourage the Merchant, thereby to advance the general Wealth of this Realm*, the Kings *Customs*, and *Strength* of Shipping, &c.

Sholes Synag 47. *tit.* 37.

It hath been formerly observed, That for the encouragement of those who maintain trade by Sea, in all Nations and States there have been special Judges appointed to hear and determine causes concerning Trade and affairs of the Sea; and it may be further noted, that such Judges

Judges have been directed to proceed at such times, and in such manner, as might best consist, with the opportunities of Trade, and least hinder or detain men from their Imployments. Amongst the *Grecians*, as at *Athens*, it was provided, *That all sutes betwixt Sea-men and Merchants should be determined in those vacations when the Seas were barred, or in those Moneths when Navigation was restrained*; So much is confirmed by *Salmatius*, *Eo tempore quo oritur Arcturus navigationes suas ut plurimum desinebant mercatores, domumque redibant; Boedromion quippe mensis qui septembri respondet, quo tempore ferè Arcturus oritur, terminus erat navigationum Atticarum, ideo ab eo mense Munichienem usque quo mense iterum se mari committebant, ac vela dabant, Mercatores Athenienses in urbe desidebant, & lites suas disceptabant, ut videre est apud Demosthenem adversus Apaturium.* Amongst the *Romans* likewise, for the better dispatch of causes concerning Sea-businesses, the Judges were ordered to proceed, *Levato velo*, and *de plano*, without that Solemnity, and formality which was used in ordinary Courts, and Causes; So in *Italy*, *Spain*, and *France*, the Judges proceed in causes

Petitus de Legibus Atticis l. 5. tit. 8.

C. de Naufragiis l. 5. & ibi Cujacius.

cauſes concerning the Sea, Summarily and in a more compendious way than other Judges uſe; And the like, as Sir *John Davies* relates, hath ſeemed to the wiſdome of this Kingdome, *Our Parliaments*, ſaith He, *have not only made extraordinary proviſions, for a more ſpeedy recovery of debts due unto Merchants, for their Merchandizes, than is provided by our Common Law, as appears by the Statute of* Acton Burnel, *made the* 11. *of* Edward 1. *and the Statute* De Mercatoribus, *made the* 13. *of* Edward 1. *but alſo hath allowed a Court of Proceedings in caſes of Merchants, different from the courſe of our Common Law; For by the Statute of the* 27. *of* Edw 3. cap. 2. *it is declared, That the proceedings in cauſes of Merchants ſhall be from day to day, and from hour to hour, according to the Law of the Staple, and not according to the courſe of the Common Law*; and by another Article in the ſame Parliament, *That all Merchants coming to the Staple ſhall be ruled by Law-merchant, touching all things coming to the Staple*, and not by the *Common Law of the Land*; and by another Article, *That neither any of the Benches, nor any of the Judges of the Common Law ſhall have any Juriſdiction in thoſe caſes.* To which may be

be added the Statute of 32 of *Hen.* 8. *Chap.* 15. and of the 43 of *Elizabeth*, *Chap.* 12. which direct, *That ſuch cauſes betwixt Seamen and Merchants ſhall be ordered ſummarily, and without delay, and as in diſcretion ſhall ſeem moſt convenient.* All which was, and may be obſerved in the Court of the Admiralty, which in many cauſes proceed at any time, and in all cauſes ſummarily, and according to Equity, but neither is, nor can be obſerved in Courts of Common Law, which are open onely in Term times, and proceed in an ordinary and ſtrict way.

Secondly, For the advantage of thoſe who uſe Navigation, and Trade by Sea, The Law-merchant and Laws of the Sea admit of divers things not agreeable to the Common Law of the Realm, which may be better inſiſted on in the Court of Admiralty, than in the Courts of the Common Law. So much is likewiſe declared by Sir *John Davyes*, relating ſeveral inſtances to that purpoſe. 1. *If two Merchants, ſaith he, be joynt Owners, or Partners of Merchandizes, which they have acquired by a joynt Contract, the one ſhall have an Action of account againſt the other,*

other, Secundum Legem Mercatoriam, *but by the Rule of the Common Law, if two men be joyntly seized of other goods, the one shall not call the other to account for the same.* 2. *If two Merchants have a joynt interest in Merchandizes, if one dye, the surviver shall not have all, but the Executor of the party deceased, shall by the Law-Merchant call the surviver to an account for the Moity, whereas by the Rule of the Common Law, if their be two joynt Tenants of other goods, the surviver* Per jus accrescendi *shall have all.* 3. *In an Action of Debt upon a simple Contract,* (which is without a Deed in Writing) *the Defendant by the Common Law may wage his Law*, That is, he may barr the Plaintiff from his Action, by taking an Oath that he doth not owe the Debt, *but when one* John Cumpton *Merchant brought an Action of debt* Secundum Legem Mercatoriam *against another Merchant upon a Contract, without* Deed, *and the Defendant would have waged his Law, he was not permitted so to do*, and the Judgement was given for the Plaintiff. It is not hereby intended that the Courts of Common Law cannot or do not take notice of the Law-Merchant, in Merchants cases, but that other things likewise

wise considered, it might be thought reasonable, if they so desire, to allow them the choice of that Court, where the Law-Merchant is more respected, than to confine them to other Courts, where another Law is more predominant. Besides, there may be danger of doubt thereof, because those things are not approved for proofs at the Common Law, which are held sufficient in the Admiralty amongst the Merchants; for as Sir *John Davies* further observes, *At the Common Law no mans Writing can be pleaded against him, as his Act, and Deed, unless the same be sealed, and delivered: But in Sutes between Merchants, Bills of Lading, and Bills of Exchange, being but ticquets, without Seals, Letters of advice, and Credence, Policies of assurance, Assignations of Debts, all which are of no force at the Common Law, are of good credit and force by the Law-Merchant.* To which may be added, what *Malines* observes, That the bearer of such Bills, by the course amongst Merchants, shall be admitted to demand, and recover the Contracts, without Letters of Atturney, which is not admitted in the Common Law. It is moreover considerable, That the Law of the Sea

looks one way, when the Common Law looks another; As for instance, A Ship is Freighted, or hired for a Voyage to the Indies, at 20 l. per moneth by Charter-party, it appeareth that having been eight Moneths in the Imployment of the Merchant, who Freighted her, before she makes any Port, with her Lading she perisheth in the Sea, in this case by the Common Law, as it hath been averred, the Owner of the Ship ought to have Freight for eight Moneths: but by the Law of the Sea, which hath alwayes been allowed, The Merchant losing his goods, the Owner loseth his Freight; Again, if the Owner loseth his Freight, the Mariner, although he escape, loseth his Wages, for the time he served, which happily would not be thought so if he sued at the *Guild-Hall* for the same.

Thirdly, for encouragement and advantage of those who use Navigation and Trade by Sea, it is considerable, That in the Court of Admiralty, one and the same Action may be brought against diverse and several persons, undertaking the same business, as when many joyn in subscription to a Policy of assurance, but if a sute be brought at the Common Law,

Law, every man must be sued severally, which the Parliament in the Act concerning assurances, held inconvenient; and in the like manner, divers and several Persons may joyn in the same sute, as Mariners for wages, at a small charge to themselves, with little prejudice to the Masters, or Owners which are sued, and obtain a Decree or Order all together, whereas when they sue at the *Guild-Hall*, every man sues severally, to the great charge of every particular, and to the excessive dammage of the Masters, or Owners, if Judgements be given against them, Besides the inconvenience (of which the Statute of the 28. of *Hen.* the 8. *cap.* 15. takes notice) That if Mariners or Shippers, which by reason of their often Voyages and Passages must depart, without long tarrying and protracting of time, be enforced to attend the ordinary terms of the Common Law.

Fourthly, the Court of Admiralty for the conveniency and dispatch of Merchants, and Sea-mens causes, admits of proofs, which the Courts of Common Law do not allow, for in that Court according to the Civil Law, the Plaintiff

may be relieved by the Defendants answer, upon Oath, which in the ordinary Courts of the Common Law is not afforded; Again, whereas in those Courts the Evidence must be produced at the Barr, before the Jury, Sea-men, and Mariners, which are many times necessary witnesses, for the reason before expresst, cannot be present without great prejudice to themselves and the Trade of the Kingdome; But in the Admiralty Court they may be produc'd at any time, after the sute is begun, and their Examinations being taken in Writing, they have liberty to follow their own, and the common occasions. Moreover, many times in causes concerning Navigation, and Trade by Sea, no proof can be made, but by Witnesses remaining in Forein parts, to which the Writs of the Common Law do not extend, but those Witnesses by Commission out of the Admiralty Court, are usually sworn and examined by Magistrates in those places, and their examinations so taken are allowed for sufficient proof upon return.

Divers other instances might be given, by which it would appear that the Court of

of Admiralty can give redress in Sutes concerning Navigation and Trade with more conveniency than the Courts of Common Law; but these considered, and how much it concerns the good of the Kingdome, and those who support Navigation and Trade, may be sufficient to discover, which Court may be best justified in proceeding in causes of that nature.

What inconvenience may follow both to the Private and Publick by the interposing of the Courts of Common Law, and by obstructions made unto the Admiralty in such businesses, may appear in one particular, that is concerning Charter-parties and Freight due for imployment of shipping. There is but one instance given of a Sute brought at the Common Law upon a Charter-party, *viz.* the 28 of *Elizabeth*, which was on the Merchants part for breach of Covenant, *viz.* for not staying in a Port of discharge so many dayes as were agreed upon, for which the Owner was condemned in 500 l. without any respect to the Loss or Damage which the Merchant had sustained: And if it be considered how many clauses there are in Charter-parties,

parties, and Covenants of things to be performed for which the Owners are bound under a general penalty, if upon every breach advantage ſhould be taken in extremity, no man would have great comfort in hiring out Ships to the Sea: And it may be obſerved, that there is no Preſident that ever any man ſued for Freight at the Common Law, which argues much difficulty in that way, as probably the performance of the Voyage being to be maintained by ſuch proofs as cannot be produced in thoſe Courts. And whereas it is affirmed, That infinite Prohibitions have been granted in cauſes commenced in the Admiralty upon Charter-parties, it muſt follow, that thereby was occaſioned infinite loſs to the Owners of the Shipping, it being moſt probable by what hath been obſerved, That the cauſe for Freight being ſtopped in the Admiralty, there was no means to recover the ſame in the Courts of the Common Law. For that is a certain Rule, That that Merchant which declines that Court knows he is in no danger elſewhere; and it falls out many times, That for long Voyages great ſumms are due for Freight, and Merchants

chants not alwayes having good success, are sometimes put to their shifts, but how far it stands with the dignity of the High Courts to countenance, or in truth afford protection to such shifts, we leave them to consider, but no man can conceive otherwise, than that those courses must needs more weaken the Shipping of the Kingdome, than divers Ordinances and Constitutions intended for the maintenance thereof can possibly advance the same. Besides the decay of Shipping, these things conduce to the impoverishing of Mariners who are the life of Shipping, for Freight is said to be the mother of wages, and the Owner losing his Freight, the Mariner cannot so well obtain his wages, and in consequence must betake himself to some other course of life.

The like inconvenience falls out in Trade and Commerce, when Prohibitions are granted for Contracts, or things done *in partibus exteris & transmarinis*, The Merchant if he can avoid the Admiralty where he must answer upon Oath, and proof may be made by Commission, thinks himself secure from any danger at the Common Law. And although it may be supposed that remedy may

may be given in the Chancery, yet howsoever it is possible it is not usual for that Court to send Commissions into Forein parts, and the pretence is for the right of Jurisdiction in the Kings Courts of the Common Law, without respect to the Chancery, to which Sir *Ed. Cook* seems to be no great friend.

FINIS.